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INDIA'S NEW CONSTITUTION

A SURVEY OF THE GOVERNMENT OF INDIA ACT 1935

SECOND EDITION

BY

J. P. EDDY

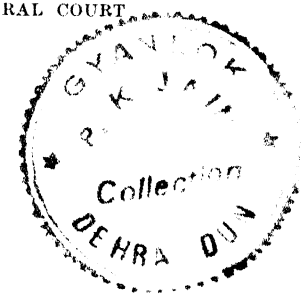
OF THE MIDDLE TEMPLE, ONE OF HIS MAJESTY'S COUNSEL
EX-JUDGE OF THE HIGH COURT OF JUDICATURE, MADRAS

AND

F. H. LAWTON

M.A. (CANTAB.) OF THE INNER TEMPLE, BARRISTER-AT-LAW

WITH A REVISED MAP OF INDIA SHOWING THE NEW PROVINCES OF ORISSA AND SIND; DRAFT INSTRUMENT OF INSTRUCTIONS TO GOVERNOR-GENERAL; INSTRUMENT OF INSTRUCTIONS TO GOVERNORS OF PROVINCES; DRAFT INSTRUMENT OF ACCESSION; AND RULES OF THE FEDERAL COURT



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PREFACE TO THE FIRST EDITION

OUR primary aim in writing this book has been to set out succinctly, in their proper historical setting, the salient features of the Government of India Act 1935.

The Act consists of 478 sections and sixteen schedules. Of these, 321 sections and ten schedules deal with India —the establishment of a Federation and the position of British India and the Indian States in relation to it. The rest apply to Burma, which by the Act ceases to be part of India.

We have devoted our attention to those provisions which relate to India's new constitution. The separation of Burma is referred to only in so far as it affects the financial position of India under the Act.

In the main we have endeavoured to summarise the provisions of the Act dealing with India, but in the case of some of the more important of them we have thought it right to set out textually the relevant sections.

While we have sought to make the book one that will enable all who are concerned with or interested in the future government of India—both in this country and in India—readily to appreciate the scope and effect of the new Act, we have not been unmindful of those who may desire to consider its legal and constitutional aspects. In addition, therefore, to other statutes, we have included references to a number of cases, some of them decisions of the Judicial Committee of the Privy Council in respect of constitutional questions in other parts of the British Empire.

In the Appendix will be found the draft Instruments of Instructions to the Governor-General and Governors which were presented to Parliament in February 1935 (Cmd. 4805) as illustrating the contents of these documents which the British Government have in mind. There are also included tables, taken from the schedules to the Act, showing the seats assigned to representatives of British India in the Federal Legislature—that is to say, the Council of State and the Federal Assembly—and the composition of the Provincial Legislative Assemblies and the Provincial Legislative Councils. The Legislative Lists—the Federal Legislative List, the Provincial Legislative List and the Concurrent Legislative List—are likewise reproduced. There is also set out a provisional draft Instrument of Accession which was published in a White Paper (Cmd. 4843) in March 1935. In the Appendix also are tables of Statutes and Cases.

We are indebted to Mr. A. G. P. Pullan, barrister-at-law, formerly a judge of the High Court, Allahabad, for his assistance in revising this work.

J. P. EDDY
F. H. LAWTON

1 BRICK COURT
TEMPLE, E.C.4
2nd August 1935

PREFACE TO THE SECOND EDITION

THE First Edition of this book, in which we attempted a survey of the Government of India Act 1935, immediately after it was passed, has received a friendly welcome not only in this country and in India, but also in many other parts of the world where the working out of India's new constitution is being followed with close attention.

Since the First Edition appeared, two important steps have been taken. First, Provincial Autonomy has been established, and, as a consequence, each of the eleven Provinces in British India—including the new Provinces of Orissa and Sind—is now as far as possible "mistress in her own house". Secondly, the Federal Court, "the interpreter and guardian of the Constitution", has been set up.

In the meantime the Act—which originally contained the new constitutions of both India and Burma—has been divided into two portions and reprinted. Thus it has become two Acts—the Government of India Act 1935, and the Government of Burma Act 1935. The former—with which alone this book is concerned—now consists of 321 sections and ten schedules.

Further, a new draft Instrument of Instructions which the Government proposed to recommend His Majesty to issue to the Governors of Indian Provinces was presented to Parliament on 3rd November 1936. This was approved by Parliament in the following month, and the Instrument became effective on 1st

April 1937—the date of the establishment of Provincial Autonomy. In addition, several Orders in Council affecting the working of India's new constitution have been made.

These developments and changes have necessitated a Second Edition of this book. Accordingly we have carefully revised the text and brought it up to date. We have extended—and we hope thereby improved—some of the chapters, and thus have sought to give effect to the many helpful suggestions we have received.

In the Appendix we have included the Rules of the Federal Court which were notified in the *Gazette of India* on 2nd December 1937.

We are indebted to Mr. F. E. James, member of the Indian Central Legislative Assembly, for his assistance in reading the proofs.

J. P. EDDY
F. H. LAWTON

TEMPLE, E.C.4
11*th January* 1938

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ABBREVIATIONS

App. Cas.	= Law Reports, Appeal Cases, 1875–1890.
A.C.	= Law Reports, Appeal Cases, since 1891.
Brod. & Bing.	= Broderip and Bingham's Reports.
Ch. D.	= Law Reports, Chancery Division.
Dom.	= Dominion Statute.
H.L. Cas.	= Clark's House of Lords Reports.
I.L.R. All.	= Indian Law Reports, Allahabad Series.
I.L.R. Luck.	= Indian Law Reports, Lucknow Series.
I.L.R. Mad.	= Indian Law Reports, Madras Series.
K.B.	= Law Reports, King's Bench Division.
L.R.I.A.	= Law Reports, Indian Appeals.
L.R. Q.B.	= Law Reports, Queen's Bench Cases.
M. & S.	= Maule and Selwyn's Reports.
M.I.A.	= Moore's Indian Appeal Cases.
Moo. P.C.C.	= Moore's Privy Council Cases.
State Tr.	= State Trials.
S.R. & O.	= Statutory Rules and Orders.
Term Rep.	= Term Reports.
Ves.	= Vesey Jun.'s Reports.

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LANDMARKS IN INDIA'S HISTORY

1600. Charter of East India Company.

1773. By the Regulating Act Warren Hastings was appointed as the first Governor-General of Bengal, with a council of four.

1837. East India Company ceased to be a trading body.

1858. Government of India transferred to the Crown.

1908. Message from the King-Emperor (King Edward VII) to the Princes and the peoples of India intimating that the time had come when the principle of representative institutions might be prudently extended.

1909. Morley-Minto reforms embodied in the Indian Councils Act.

1919. Government of India Act providing for the system of "dyarchy" as outlined in the Montagu-Chelmsford Report, with a Preamble recording the policy of Parliament with respect to the progressive realisation of responsible government in British India.

1930. Report of the Simon Commission.
Round Table Conference began in London.

1932. Round Table Conference ended.

1933. White Paper issued by the British Government setting out their proposals for Indian Constitutional Reform.

1934. Joint Select Committee presented their Report.

1935. Government of India Act providing for Provincial Autonomy and the Federation of India.

1937. Provincial Autonomy established.
Federal Court inaugurated.

CHAPTER I

INTRODUCTORY: 1858–1937

"May I suggest to my Indian friends, in one last sentence, that there is a wealth of wisdom in a proverb of their own which is to be found in the 'Dharma Pad' or 'Path of Right', the Buddhist Book of Proverbs, which runs as follows: 'Enmity never comes to an end through enmity here below: it comes to an end through non-enmity. This has been the rule from all eternity.' "—The Marquess of Zetland, Secretary of State for India, in the House of Lords, the 24th July 1935.

"The design of Parliament and the object of those of us who are servants of the Crown in India is to ensure the utmost degree practicable of harmonious co-operation with the elected representatives of the people for the betterment and improvement of each individual province and of India as a whole. . . ."—The Marquess of Linlithgow, Governor-General of India, in a message to India on the 21st June 1937.

ANOTHER chapter was added to the constitutional history of India by the passing of the Government of India Act 1935 (26 Geo. V, c. 2) on the 2nd August of that year—a chapter destined vitally to change the political structure of the country and to provide means of linking British India and the Indian States in one great Federation.

The beginnings of the movement which has resulted

in this far-reaching enactment are not difficult to detect in India's chequered story. The collapse of the Mogul Empire, with its despotic rule, the promotion of peaceful commerce under the East India Company after centuries of strife, and the transfer of the government of India to the Crown in 1858 by the statute 21 and 22 Victoria, c. 106—"An Act for the better Government of India"—all prepared the way for India's progress towards political development.

By the year 1908—on the occasion of the fiftieth anniversary of the assumption of the government of India by the Crown—the movement had become sufficiently noteworthy to justify this message from the King-Emperor (King Edward VII) to the Princes and peoples of India—

> "From the first, the principle of representative institutions began to be gradually introduced, and the time has come when, in the judgment of my Viceroy and Governor-General and others of my counsellors, that principle may be prudently extended. Important classes among you, representing ideas that have been fostered and encouraged by British rule, claim equality of citizenship and a greater share in legislation and government.
>
> "The politic satisfaction of such a claim will strengthen, not impair, existing authority and power. Administration will be all the more efficient if the officers who conduct it have greater opportunities of regular contact with those who influence and reflect common opinion about it."

The policy here adumbrated found expression shortly afterwards in the Indian Councils Act 1909 (9 Edw. VII, c. 4)—commonly known as the Morley-Minto reforms.

The result of the reforms was to introduce the electoral principle into the Indian legislatures and to widen their sphere of influence over the executive government. In effect, however, they were merely advisory bodies without any administrative responsibility.

At this time, beginning with the East India Company Act 1770 (10 Geo. III, c. 47), there were in operation nearly fifty statutes affecting the government of India. These were repealed in whole or in part by the Government of India Act 1915 (5 and 6 Geo. V, c. 61), which in turn was amended by the Government of India (Amendment) Act 1916 (6 and 7 Geo. V, c. 37).

The Declaration of 1917

In 1917 there was an important step forward. Mr. Montagu then made the following declaration in the House of Commons—

> "The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible. . . .
>
> "I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and measure of each advance, and they must be guided

by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility."

In the following year came the Montagu-Chelmsford Report. The joint authors there stated that the above declaration was "The most momentous utterance ever made in India's chequered history". Their Report proposed that responsible government should be conferred on India by progressive stages—that the first stage should be confined to the major provinces and that there a revised system of local government should be introduced. The system suggested was a dual form of government known as "dyarchy"—a division of the field of government in each major Province into two sections, with "reserved subjects" administered by the Governor and his executive council and "transferred subjects" administered by the Governor and Ministers chosen by him from the provincial legislature.

But the joint authors of the Montagu-Chelmsford Report visualised an All-India solution as the ultimate goal of British policy in India. "Our conception of the eventual future of India", they said, "is a sisterhood of States, self-governing in all matters of purely local or provincial interest. . . . Over this congeries of States would preside a central government, increasingly representative of and responsible to the people of all of them; dealing with matters, both internal and external, of common interest to the whole of India; acting as arbiter in inter-state relations, and representing the interests of all India on equal terms with the self-governing units of the British Empire. In this picture there is a place also for the Native States."

The Preamble of 1919

The system of "dyarchy" outlined in the Montagu-Chelmsford Report was embodied in the Government of India Act 1919 (9 and 10 Geo. V, c. 101).

To that Act there was a Preamble recording the policy of Parliament with respect to the progressive realisation of responsible government in British India. That Preamble still stands. It has not been repealed by the new Act. It is in these terms—

> "Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration and for the gradual development of self-governing institutions, with a view to the progressive realisation of responsible government in British India as an integral part of the Empire:
>
> "And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken:
>
> "And whereas the time and manner of each advance can only be determined by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples:
>
> "And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility:
>
> "And whereas concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independ-

ence of the Government of India which is compatible with the due discharge by the latter of its own responsibilities."

The Act of 1919 provided for the appointment of a Statutory Commission at the expiration of ten years after the passing of the Act "for the purpose of inquiring into the working of the system of government, the growth of education, and the development of representative institutions, in British India, and matters connected therewith", and to report "as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify or restrict the degree of responsible government then existing therein, including the question whether the establishment of second chambers of the local legislatures is or is not desirable".

The Statutory Commission

The Statutory Commission were duly appointed in November 1927 under the chairmanship of Sir John Simon. They paid two visits to India, the first lasting from the 3rd February 1928 to the 31st March 1928 and the second from the 11th October 1928 to the 13th April 1929. Their Report was presented to Parliament in May 1930. It recommended the reorganisation of British India on a federal basis with a view to a future development when India as a whole would take her place among the constituent States of the Commonwealth of Nations united under the Crown.

"It might be possible", said the Commission, "to visualise the future of federation in India as the bringing into relationship of two separate federations, one

comprised of the elements which make up British India, the other of the Indian States. We do not wish in any way to be dogmatic on a matter which must be decided by those concerned. While we have given much attention to the subject, we have not received evidence from the Rulers of the Indian States. . . . We are inclined ourselves to think that the easier and more speedy approach to the desired end can be obtained by reorganising the constitution of India on a federal basis in such a way that individual States or groups of States may have the opportunity of entering as soon as they wish to do so."

Round Table Conference

Following the Report of the Statutory Commission came three sessions of the Indian Round Table Conference.

The Conference met in London in November 1930 and was composed of representatives of British and Indian political parties, the Indian States, the depressed classes, and other minorities. The principle of Federation was immediately accepted by the States representatives, provided that the federal centre was granted responsibility and that the powers to be surrendered to the Federation met with the approval of the Princes. At the end of the First Session, in January 1931, the then Prime Minister, the late Mr. Ramsay MacDonald, announced, "With a legislature constituted on a federal basis, His Majesty's Government will be prepared to recognise the principle of the responsibility of the executive to the legislature". The Second Session was held in September 1931, and Mr. Gandhi then attended

as the sole representative of Congress. The Conference ended in December 1932.

Owing to failure to reach an agreed settlement on the question of the allocation of seats in the Provincial Legislatures, the British Government were obliged, on 4th August 1932, to make their Communal Award.

In March 1933 the British Government issued a White Paper (Cmd. 4268) setting out their proposals for Indian Constitutional Reform. These proposals included the Federation of India—a union between the Governors' Provinces and those Indian States whose Rulers signified their desire to accede to the Federation by a formal Instrument of Accession.

A Joint Select Committee of both Houses of Parliament was then set up to consider the proposals in consultation with Indian representatives and to report upon them. The Committee presented their Report in October 1934 and it is upon their recommendations that the provisions of the new Act are largely based.

The Federation of India

In conformity with the White Paper and the Report of the Joint Select Committee, the new Act provides for the establishment by the Proclamation of His Majesty, if an address in that behalf has been presented to him by each House of Parliament, of a Federation under the Crown by the name of the Federation of India. In it there will be united—

(*a*) The Governors' Provinces and the Chief Commissioners' Provinces.

(*b*) The Indian States which have acceded or may accede to the Federation.

The executive authority of the Federation will be exercised on behalf of His Majesty by the Governor-General, who will have special responsibilities.

There will be a Council of Ministers to aid and advise the Governor-General in the exercise of his functions except in so far as he is required to exercise them in his discretion.

There will be a Federal Legislature which will consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State and the House of Assembly.

Financial Inquiry

Under the Act Provincial Autonomy was to be established on such date as was appointed by Order in Council. As a preliminary step, however, there was to be an expert financial inquiry in India.

Shortly after the passing of the Act in August 1935, Sir Otto Niemeyer was appointed to make the inquiry. Accordingly he proceeded to India and discussed the financial position with the financial authorities of each Province and with the Finance Department of the Government of India. In addition, he considered a number of non-official representations which were addressed to him. His report—that Provincial Autonomy was financially feasible—was made to the Secretary of State for India on 6th April 1936, and was presented to Parliament the same month (Cmd. 5163).

Prior to the publication of Sir Otto Niemeyer's Report and pursuant to the provisions of section 289 of the Act, Orders in Council were made (S.R. & O., 1936, Nos. 164-165) creating as from 1st April 1936 two

new Provinces—Orissa and Sind. The new Province of Orissa was carved out of the territories of the former Province of Bihar and Orissa and certain areas which had previously formed part of the Presidency of Madras and of the Central Provinces; that of Sind out of the Presidency of Bombay.

Provincial Autonomy

With these preliminaries completed, the establishment of Provincial Autonomy under the Act became possible and was in fact effected by the Government of India (Commencement and Transitory Provisions) Order 1936 (S.R. & O., 1936, No. 672), which was made on 3rd July 1936. Under this Order Provincial Autonomy was established as from 1st April 1937.

Under the new constitution the executive authority of each of the Provinces is exercised on behalf of His Majesty by the Governor, who also has special responsibilities.

As in the case of the Governor-General, there is a Council of Ministers to aid and advise the Governor in the exercise of his functions except in so far as he is required to exercise them in his discretion.

For every Governor's Province there is a Provincial Legislature which consists of His Majesty, represented by the Governor, and—

(*a*) in the Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam—two Chambers;

(*b*) in other Provinces—one Chamber.

Where there are two Chambers of a Provincial Legislature, they are known respectively as the Legislative

Council and the Legislative Assembly, and where there is only one Chamber it is known as the Legislative Assembly.

In Orissa the Legislative Assembly has selected Cuttack-Chowdwar as the capital of the Province.

The Act, of course, contains detailed provisions with respect to the distribution of powers as between the Federal Legislature and the Provincial Legislatures; the administrative relations as between the Federation, the Provinces and the Indian States; the distribution of revenues as between the Federation and the Federal units, and other necessary matters.

The executive authority of the Federation in respect of the regulation and the construction, maintenance and operation of railways is to be exercised by a Federal Railway Authority. The Authority is to act on business principles, due regard being had to the interests of agriculture, industry, commerce and the general public. A Railway Tribunal is also to be set up.

The Federal Court

An essential element in a Federal constitution is a Federal Court. The Act makes provision for the establishment of such a Court, to consist of a Chief Justice of India and such number of other Judges as His Majesty may deem necessary.

The Federal Court was in fact constituted as from 1st October 1937 under the terms of the Government of India (Federal Court) Order 1936 (S.R. & O., 1936, No. 1323). Rules governing the practice and procedure of the Court were published in the *Gazette of India* on 2nd December 1937, and they are set out in the

Appendix to this book. The inaugural sitting of the Court was held at Delhi on 6th December 1937.

The three main principles of the Act—as advocated by the Report of the Joint Select Committee—are—

1. **All-India Federation.**
2. **Provincial Autonomy.**
3. **Responsibility with safeguards.**

The position of the Crown in relation to the Federation and the whole of the constitutional machinery provided by the Act are fully explained in the following pages.

CHAPTER II

THE CROWN AND BRITISH INDIA

I. *The East India Company*
II. *Transfer of Government to the Crown*
III. *Prerogative Rights*

GEOGRAPHICALLY, India is one and indivisible. Politically, there are two Indias: British India, covering about 820,000 square miles, with a population of 260,000,000; and the Indian States of some 700,000 square miles in extent, with a population of 80,000,000.

The dominion and authority of the Crown extend over the whole of British India, being derived from many sources, in part statutory and in part prerogative. The prerogative rights and powers have their origin in conquest, cession or usage; some have been directly acquired, while others are enjoyed by the Crown as successor to the rights of the East India Company.

I. THE EAST INDIA COMPANY

It was on the 31st December 1600 that English merchants trading to the East received a charter from Queen Elizabeth. From a comparatively small concern the East India Company steadily developed until it had large trading centres established at Madras, Bombay and Calcutta. It built its factories on land held under the Mogul and his feudatories. It was governed by a Court of Directors and a Court of Proprietors.

As the business of the company grew in India, it acquired control over large territories and revenues, and it supported its authority and increased its possessions by the maintenance of armed forces. It was indeed at Plassey in 1757 that Clive gained for the company the practical control of Bengal and thus laid the foundation of British supremacy in India.

But the failure of the East India Company to deal with problems of administration called urgently for consideration. The position was frequently debated in Parliament, and, as a result, there was passed the Regulating Act of 1773 (13 Geo. III, c. 63). This Act may well be regarded as the first experiment at the establishment of a British Government in India. By it a governor-general and four counsellors were appointed for the Bengal Presidency. By it also the Government at Fort William became responsible not only for the civil and military administration of Bengal, as well as of Bihar and Orissa, but it was also given control over the presidencies of Madras and Bombay. Under the Act Warren Hastings became the first governor-general.

A Board of Control

In 1784—during the administration of Warren Hastings—there was passed another Act for the better regulation and management of the affairs of the East India Company—the statute 24 Geo. III, c. 25. This Act rendered the East India Company directly subordinate to the British Government. By it a Board of Control was set up consisting of Privy Councillors not exceeding six in number, of whom one of the Secretaries of State and the Chancellor of the Exchequer for the

time being should be two. They were termed "Commissioners for the affairs of India".

Parliament continued from time to time to consider the position in India, and in 1812 there was a searching inquiry by a committee of the House of Commons. This resulted in the passing of the Charter Act of 1813 (53 Geo. III, c. 155) by which the company's control of its territories and revenues was renewed for twenty years "without prejudice to the undoubted sovereignty of the Crown of the United Kingdom of Great Britain and Ireland". Subject to certain restrictions, however, its trade monopoly was abolished.

By the Charter Act of 1833 (3 & 4 Will. IV, c. 85) the constitution of the company was vitally changed. Its trading privileges were taken away and it ceased to be a commercial body. But it retained its administrative and political powers for another twenty years "in trust for His Majesty his heirs and successors for the service of the Government of India in Council". In 1853 by the Charter Act of that year (16 & 17 Vict. c. 95) the company's charter was renewed not for any stated term but "until Parliament should otherwise direct".

II. TRANSFER OF GOVERNMENT TO THE CROWN

In 1857 came the Mutiny. Parliament, realising that the system of "double government" could no longer continue, promptly took steps to put an end to the East India Company. The Government of India Act 1858 (21 & 22 Vict. c. 106) was passed. By this Act it was declared that India was to be governed directly by and in the name of the Crown, acting through a Secretary

of State. It was provided that the Secretary of State should exercise all the former powers of the Court of Directors and the Board of Control, and he was given a council of fifteen members. The property of the company was transferred to the Crown.

Three years later Indians began for the first time to take part in making laws for India. This was the result of the passing of the Indian Councils Act 1861 (24 & 25 Vict. c. 67) which remodelled the Indian Legislatures. It was the precursor of other measures, notably the Indian Councils Act 1909 (9 Edw. VII, c. 4) and the Government of India Act 1919 (9 & 10 Geo. V, c. 101), which aimed at giving Indians an increasing share in the government of their country under the Crown.

The Government of India Act 1919, it is to be observed, clothed the Governor-General in Council with powers of superintendence, direction, and control over the civil and military government. At the same time it enabled provincial Governments to be invested with functions by devolution rules made by the Governor-General in Council.

In contrast to this system of devolution and re-devolution of powers, the fundamental conception underlying India's new constitution is that the government of India is to be the government of the Crown itself conducted, as in Great Britain and the Dominions, by authorities deriving functions directly from the Crown, save in so far as the Crown itself retains executive power. When the Government of India Act 1935 came into operation, all governmental jurisdictions were resumed and a single reservoir of powers created in the Crown. Those powers which the constitutional practice of Great Britain and the Dominions allows His Majesty

in Council to exercise have been retained; all other powers have devolved upon the appropriate authorities.

In some cases this redistribution of powers has resulted in the subjection of certain prerogative rights to control under the Act: for example, the prerogative to determine the extent of the executive authority of Governors appointed under Letters Patent is restricted by those sections of the Act which prescribe the limits of Federal and Provincial executive authority. It is now clearly established that where the operation of a statute overlaps the exercise of the prerogative, then the prerogative is superseded to the extent of the overlapping (Attorney-General *v.* De Keyser's Royal Hotel Limited, 1920 A.C. 508).

III. PREROGATIVE RIGHTS

Despite the wide operation of the Act and the multitude of topics with which it deals, it is submitted that, in relation to British India, the following prerogative rights remain—

1. The Crown enjoys exemption from criminal or civil liability. Under section 179 provision is made for the bringing of suits against the Federation or a Provincial Government in the name of the Federation of India or of the Province, but the Act in no other way derogates from the common law rule that the King himself is above the law.

2. All the land in British India is vested in the Crown as ultimate owner and all waste land is its absolute property (*In re* Transfer of Natural Resources to the Province of Saskatchewan, 1932 A.C. 28).

3. Gold and silver mines belong to the Crown (Hud-

son's Bay Co. *v.* Attorney-General for Canada, 1929 A.C. 285).

4. The Crown enjoys escheats of land, treasure-trove and the separate property of persons dying intestate without kin (Attorney-General of Ontario *v.* Mercer (1883), 8 App. Cas. 767; Collector of Masulipatam *v.* Cavaly Vencata Narrainapah (1860), 8 M.I.A. 500). Section 174 provides, however, that any property in India accruing to the Crown by escheat or lapse, or as *bona vacantia*, shall, if it is property situate in a Province, vest in the Crown for the purposes of the Government of that Province. In other cases such property is to vest in the Crown for the purposes of the Government of the Federation.

5. The ships of the Crown are exempt from seizure in respect of salvage claims or claims for damage done by collisions (Young *v.* s.s. *Scotia*, 1903 A.C. 501).

6. The prerogative of mercy. Section 295 of the Act enacts that no authority outside a Province, except the Governor-General, shall have any power to suspend, remit or commute a sentence of death passed on any person convicted in the Province. The section goes on specifically to provide, however, that nothing in the Act shall derogate from the right of His Majesty or of the Governor-General, if any such right is delegated to him, to grant pardons, reprieves, respites or remissions of punishment.

7. The prerogative to grant honours of imperial status. Even with respect to the Dominions the control of this prerogative lies with the Imperial Government.

8. The prerogative to settle the order of precedence. In the Dominions the practice has been for the

ministry to draw up a list for submission to the King. Effect has sometimes been given to ministerial advice by statutory enactment, but usually matters of precedence have been dealt with by His Majesty under the prerogative, as in the case of the Commonwealth of Australia in 1903, the Union of South Africa in 1910 and Canada in 1923.

The way in which the Act works under the Crown in relation to British India is described in Chapter V, which deals with the subject of Provincial Autonomy.

CHAPTER III

THE CROWN AND THE STATES

I. *The Paramount Power*
II. *Sovereignty of the States*
III. *Accession to the Federation*

I. THE PARAMOUNT POWER

BOTH in status and character the Indian States are wholly different from the Provinces of British India. They are subject to the Paramountcy of the Crown, and are still for the most part under the personal rule of their Princes.

The provisions of the Act relating to the accession of the States to the Federation are based upon the existing constitutional status of the States. An understanding of this status is essential to an understanding of the Act.

The law which governs the relationship of the Paramount Power—the Crown—to the States is a unique body of law, because it has no parallel in the constitutional history or law of any other country. That relationship and the law which governs it have been gradually developed and shaped during the whole period of British rule in India. Opinion differs as to its extent and as to the bases upon which it rests.

The Indian States possess a measure of sovereignty and are bound to the Crown by treaties, engagements, sanads (grants), usage and political practice. At first the

relationship between the Paramount Power and the States was probably based solely upon treaties and engagements. In the 18th century, for example, many treaties were made on a basis of equality. Thus, in Nabob of the Carnatic *v.* East India Company (1792, 2 Ves. 60) the Court of Chancery regarded a treaty between the parties as a treaty made between two independent states. Forms appropriate to treaties between two independent sovereign states survived long after equality had ceased to exist.

Treaties with the Princes

The advance of British dominion brought about changes in the nature of the relationship. As early as 1773 the East India Company was in a position to obtain the signature of the ruler of Cooch Behar to a treaty of obedience and submission. Treaties of protection were made with Mysore in 1799, Nagpur in 1816 and Bikaner in 1818. Treaties of subordinate co-operation were signed with both Udaipur and Jodhpur in 1818.

The validity of the treaties and engagements made with the Princes and the maintenance of their rights, privileges and dignities have been asserted and observed by the Paramount Power. But the Paramount Power has had of necessity to make decisions and exercise functions beyond the terms of treaties, in order to secure the observance of treaty obligations and the maintenance of the peace of India as a whole.

The case of Hyderabad may be cited by way of illustration. In 1800 the British made a treaty with His Highness the Nizam, article 15 of which contains the following clause—

"The Honourable Company's Government on their

part hereby declare that they have no manner of concern with any of His Highness' children, relations, subjects, or servants, with respect to whom His Highness is absolute."

Yet as soon as 1804 the Indian Government successfully pressed the appointment of an individual as Chief Minister. In 1815 the same Government had to interfere because the Nizam's sons offered violent resistance to his orders. The administration of the State gradually sank into chaos. Cultivation fell off, famine prices prevailed, justice was not obtainable and the population began to migrate. The Indian Government was compelled again to intervene, and in 1820 British officers were appointed to supervise the district administration with a view to protecting the cultivating classes. Later on again the Court of Directors instructed the Indian Government to intimate to the Nizam through the Residency that they could not remain "indifferent spectators of the disorder and misrule", and that unless there were improvement it would be the duty of the Indian Government to urge on His Highness the necessity of changing his minister and taking other measures necessary to secure good government.

After the Mutiny

Events during the Mutiny showed the value of the Princes' co-operation. The Crown had, in the words of Lord Canning, "seen a few patches of Native Government prove breakwaters to the storm which would otherwise have swept over us in one great wave". A Proclamation made in 1858 and the sanads (grants) issued later to all the important ruling chiefs assured the Princes of

Her Majesty's desire to see their rule perpetuated, and sanctioned the practice of adoption for Hindus and for Muhammadans of "any succession which might be legitimate according to their law". But as the country settled down after the Mutiny the old difficulties with the States arose once more. Lord Lawrence, who became Viceroy in 1864, never hid his view that it was the Government's duty to level up the standard of administration in the States. The Crown demanded a fuller Paramountcy than had been exercised by the East India Company. No succession was valid until it received the sanction of the British authorities, and in cases of dispute the Government's decision was final. In all cases of minority rule the Government claimed the right of approving, and, ultimately, of appointing the Regent. There thus developed a political usage which supplemented the various treaties, engagements and sanads.

The Baroda Case

In the Baroda Case (1873–1875) the Crown, as Paramount Power, found it necessary to define its authority and right to intervene. A commission had been appointed to investigate complaints brought against the Gaekwar's administration. He protested against the appointment of the commission as not being warranted by the relations subsisting between the British Government and the Baroda State. In reply the Viceroy and Governor-General, Lord Northbrook, wrote—

> "This intervention, although amply justified by the language of treaties, rests also on other foundations. Your Highness has justly observed that 'the British Government is undoubtedly the Paramount Power in

India, and the existence and prosperity of the Native States depend upon its fostering favour and benign protection'. This is especially true of the Baroda State, both because of its geographical position intermixed with British territory, and also because a subsidiary force of British troops is maintained for the defence of the State, the protection of the person of its ruler, and the enforcement of his legitimate authority.

"My friend, I cannot consent to employ British troops to protect any one in a course of wrong-doing. Misrule on the part of a government which is upheld by the British power is misrule in the responsibility for which the British Government becomes in a measure involved. It becomes therefore not only the right but the positive duty of the British Government to see that the administration of a state in such a condition is reformed, and that gross abuses are removed.

"It has never been the wish of the British Government to interfere in the details of the Baroda administration, nor is it my desire to do so now. The immediate responsibility for the Government of the State rests, and must continue to rest, upon the Gaekwar for the time being. He has been acknowledged as the sovereign of Baroda, and he is responsible for exercising his sovereign powers with proper regard to his duties and obligations alike to the British Government and to his subjects. If these obligations be not fulfilled, if gross misgovernment be permitted, if substantial justice be not done to the subjects of the Baroda State, if life and property be not protected, or if the general welfare of the country and people be persistently neglected, the British Government will assuredly intervene in the manner which in its judgment may be best calculated

to remove these evils and to secure good Government. Such timely intervention, indeed, to prevent misgovernment culminating in the ruin of the state is no less an act of friendship to the Gaekwar himself than a duty to his subjects."

Lord Reading's Pronouncement

In 1926 Lord Reading, then Viceroy of India, in a letter to His Exalted Highness the Nizam, summarised the position as follows—

> "The Sovereignty of the British Crown is supreme in India, and therefore no Ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements, but exists independently of them and, quite apart from its prerogative in matters relating to foreign powers and policies, it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order throughout India."

Since the Crown's Paramountcy has largely grown up independently of treaties, engagements and sanads, difficult questions arise as to its relations with these treaties, engagements and sanads. It is submitted that the rights and privileges conferred by these documents must be construed as subject to this Paramountcy. They may vary the rights which the Paramount Power possesses in respect to a particular State: they may extend those rights or they may restrict them. But they cannot exempt the States from subordination to that Paramount

Power which the Crown has acquired by usage, independently of treaties, to take what measures it sees fit for the safety of the British Empire, the interests of India as a whole, or the interests of the States.

II. SOVEREIGNTY OF THE STATES

The existence of the Crown's Paramountcy and its varying relations with particular States in no way derogates from the sovereignty of the States. According to Sir Henry Maine in 1864 in his minute on Kathiawar—

> "Sovereignty is a term which, in international law, indicates a well-ascertained assemblage of separate powers or privileges. The rights which form part of the aggregate are specifically named by the publicists, who distinguish them as the right to make war and peace, the right to administer civil and criminal justice, the right to legislate and so forth. A sovereign who possesses the whole of this aggregate is called an independent sovereign; but there is not, nor has there ever been, anything in international law to prevent some of those rights being lodged with one possessor, and some with another. Sovereignty has always been regarded as divisible. . . . It may perhaps be worth observing that, according to the more precise language of modern publicists, 'sovereignty' is divisible but independence is not. Although the expression 'partial independence' may be popularly used, it is technically incorrect. Accordingly, there may be found in India every shade and variety of sovereignty, but there is only one independent sovereign—the British Government."

The sovereignty of the States results in their legal relationships with the Paramount Power being quasi-international in form. Thus the principles of comity which exempt one foreign sovereign from the processes of the courts of another have been applied in the dealings between the Paramount Power and the States. Acts done by the Paramount Power in the exercise of its authority in relation to the States are Acts of State which are not cognisable by any Court in either British India or in Great Britain (Secretary of State for India in Council *v.* Kamachee Boye Sahaba (1859), 13 Moo. P.C. C. 22; Salaman *v.* Secretary of State for India in Council, 1906 1.K.B. 613).

The Paramount Power and the Princes

The division of sovereignty between the Paramount Power and the States must necessarily result in the definition of authority. The Paramount Power has such powers as to enable it to act in the interests of the Empire, in the interests of India as a whole, and in the interests of the States. Beyond this its powers do not extend. It has, for example, no control over State Courts, State Police or coinage. Control of the military forces of the States is exercised in partnership with the Princes. State territory is not British territory, nor are State subjects, whilst residing in their States, British subjects.

Since Paramountcy is based, not on common law or statute, but upon treaties, engagements and sanads, supplemented by usage and the practice of the Political Department, the relationship between the rulers of the Indian States and the Crown is primarily consensual. This nature of the relationship has occasioned much

apprehension and many difficulties. In 1928 the Indian States Committee reported (in Cmd. 3302) as follows—

> ". . . the States demand that without their own agreement the rights and obligations of the Paramount Power should not be assigned to persons who are not under its control, for instance, an Indian Government in British India responsible to an Indian Legislature. If any government in the nature of a dominion government should be constituted in British India, such a government would clearly be a new government resting on a new and written constitution. . . . The relations of the States to such a government would raise questions of law and policy which we cannot now and here foreshadow in detail. We feel bound, however, to draw attention to the really grave apprehension of the Princes on this score, and to record their strong opinion that, in view of the historical nature of the relationship between the Paramount Power and the Princes, the latter should not be transferred without their own agreement to a relationship with a new government in British India responsible to an Indian Legislature."

Round Table Conference

The demand for recognition in the polity of India was met by an invitation to the Round Table Conference which was accepted by the Princes. The Conference met in London in November 1930 in a troubled atmosphere: but from the first the Princes adopted the view that their wisest course was to stand forward as the sponsors of a unified Federal Government of India, which they might strengthen by their co-operation. Their accept-

ance of Federation, however, was to be conditional upon the provision of adequate safeguards for their traditional independence. They insisted on the maintenance of their relations with the Crown and its corollary, the military protectorate. This meant the reservation of defence in the hands of the Governor-General. They stipulated further that there should be no interference with their internal affairs.

It followed that Federal taxation in the States would have to be indirect and that the Princes should be given adequate influence on railway policy, currency and the Reserve Bank—which is referred to in Chapter IX. Finally, they suggested the condition precedent to the inauguration of a Federal Government should be the establishment of financial stability in British India. As a whole, the States were free from budgetary difficulties; and they had no intention of being embarrassed by the financial troubles of their neighbours.

Despite the important contribution of the State Ministers to the protracted negotiations of the Round Table Conference, the Government of India Bill as originally drafted proved unacceptable to the Princes, who demanded that clear provisions should be inserted to ensure that accession to the Federation should be by separate treaties, each State defining in its instrument of accession the extent to which it was prepared to accept Federal authority. Further negotiations followed, and, as a result, the Bill was re-drafted so as to remove many of the objections advanced by the States against it.

III. ACCESSION TO THE FEDERATION

The new Act recognises that the accession of a State to the Federation cannot take place otherwise than by

the voluntary act of its Ruler. It does not make any State a member of the Federation; it only prescribes a method whereby a State may accede, and sets out the constitutional consequences of accession. It is within the discretion of the Rulers whether or not they enter the Federation.

Section 5 of the Act provides that the Federation is to be constituted by a Proclamation made by His Majesty. Before the Proclamation can be made, however, two conditions are to be fulfilled—

1. An address in that behalf must have been presented to the King by each House of Parliament;
2. Rulers of States representing not less than half the aggregate population of the States and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber must have signified their desire to accede to the Federation.

The condition precedent that both Houses of Parliament should present an address to His Majesty was imposed in order to secure, first, that Parliament should have an opportunity of satisfying itself that the prescribed number of States had signified their desire to accede, and, secondly, that the then existing political, financial and economic circumstances were favourable to the successful establishment of the Federation.

Instrument of Accession

Under section 6 a State is to be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors—

(a) declares that he accedes to the Federation as established under the Act, with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal Authority established for the purposes of the Federation, shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to his State such functions as may be vested in them by or under the Act; and

(b) assumes the obligation of ensuring that due effect is given within his State to the provisions of the Act so far as they are applicable therein by virtue of his Instrument of Accession.

The section goes on to provide that an Instrument of Accession may be executed conditionally on the establishment of the Federation on or before a specified date, and in that case the State shall not be deemed to have acceded to the Federation if the Federation is not established until after that date.

In an Instrument of Accession will be set out the matters which the Ruler accepts as being within the scope of Federal powers over his State. It will specify also the limitations which he desires to impose upon those powers. By a supplementary Instrument executed by him and accepted by the Crown, a Ruler may vary the Instrument of Accession of his State by extending the functions which by virtue of that Instrument are exercisable by the Crown or any Federal Authority in relation to his State. It is to be a term of every Instrument of Accession that certain matters (set out in the second schedule to the Act), may, without affecting the accession of the State, be amended by or under the authority of Parliament. No such amendment, however,

is, unless it is accepted by the Ruler in a supplementary Instrument, to be construed as extending the functions which by virtue of the Instrument are exercisable by His Majesty or any Federal authority in relation to the State.

Under the Act the Crown is not bound to accept any Instrument of Accession or supplementary Instrument. If the Crown considers that the terms of an Instrument are inconsistent with the scheme of Federation, then that Instrument is to be rejected. It should be noted, however, that a State's Instrument of Accession once accepted is to be conclusive as to the extent of Federal authority, both legislative and executive, in relation to that State.

A draft provisional Instrument of Accession is set out in the Appendix to this book.

Conformity with Federal Scheme

As soon as possible after any Instrument of Accession or supplementary Instrument has been accepted by the Crown, copies of it and of His Majesty's Acceptance are to be laid before Parliament, and all Courts are to take judicial notice of every such Instrument.

The power to withhold acceptance of an Instrument of Accession will enable the Crown to secure that all Instruments shall be in the same form. Questions may arise hereafter whether the Federal Government or the Federal Legislature were competent in relation to a particular State to do certain things or to make certain laws, and the Federal Court may have to solve such problems. In the opinion of the Joint Select Committee, it would be very unfortunate if the Court found itself compelled in any case to base its decision upon some

expression or phraseology peculiar to the Instrument under review and not found in other Instruments.

The provision relating to the power of the Crown to reject an Instrument the terms of which were inconsistent with the Federal scheme was inserted in order to ensure some measure of uniformity. The Report of the Joint Select Committee stated that His Majesty's Government hoped that the Rulers who acceded would, in general, be willing to accept certain specific items of the Federal list as Federal subjects. It may perhaps be inferred that the British Government intends to procure as far as is reasonably possible that the lists of subjects accepted as Federal by Rulers willing to accede to the Federation shall not differ from one another to any great extent. The Report of the Joint Select Committee suggested that a Ruler who desired in his own case to except, or to reserve, subjects which appear in what may perhaps be described as the standard list of Federal subjects in relation to the States, ought to be invited to justify the exception or reservation before his accession was accepted by the Crown.

There are States which will be able to make out a good case for the exception or reservation of certain subjects, some by reason of existing treaty rights, others because they have long enjoyed special privileges (as, for example, in connection with postal arrangements, and even currency or coinage) in matters which will henceforth be the concern of the Federation. But accession which, by reason of exceptions or reservations, was illusory or merely colourable would, it is thought, do much to hinder the performance of Federal functions and to bring the Federation itself into disrepute.

After the establishment of the Federation the request

of a Ruler that his State may be admitted to the Federation is to be transmitted to His Majesty through the Governor-General. After the expiration of twenty years from the establishment of the Federation the Governor-General is not to transmit to His Majesty any such request until there has been presented to him by each Chamber of the Federal Legislature, for submission to His Majesty, an address praying that His Majesty may be pleased to admit the State into the Federation.

Rights of the Paramount Power

In constituting the Federation, the Act does not derogate from the Paramountcy of the Crown. In the past, the rights of the Paramount Power have been exercised on behalf of the Crown by the Governor-General in Council, subject to the general control of the Secretary of State. Having regard to the consensual nature of the Paramountcy of the Crown, it was clear that under the new constitution these rights could not be exercised on behalf of the Crown by any Federal Authority, save in so far as they fell within the Federal sphere, and only then when they affected a State which had acceded to the Federation. The White Paper proposed that (subject to the exception above mentioned) these rights of Paramountcy should in future be exercised by the representative of the Crown in his capacity as Viceroy; and that, in order to put the distinction beyond doubt, the office of Governor-General should be severed from that of Viceroy. The Report of the Joint Select Committee agreed with the principle underlying this proposal, but did not consider that the method to

be employed to give effect to it was entirely appropriate.

Under the Act all powers relating to the States, exercised in the past on behalf of His Majesty by the Governor-General in Council, are to revert to the Crown. Section 3 distinguishes between functions of the Crown in connection with British India and the Federation and functions in connection with the States. The former are to be exercised by the Governor-General; the latter by "His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States". Section 286 (1) makes provision for the correlation of functions. Thus, under that section, "if His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States requests the assistance of armed forces for the due discharge of those functions, it shall be the duty of the Governor-General in the exercise of the executive authority of the Federation to cause the necessary forces to be employed accordingly". It is enacted, however, that it shall be lawful for His Majesty to appoint one person to fill both offices.

Section 294 defines the extent to which powers exercised up to the date of the passing of the Act by the Crown in Federated States will continue to be exercised under the Federal constitution.

The Crown's jurisdiction in certain military zones such as Quetta, Secunderabad and Bangalore will remain unaltered, but if the Crown wishes at any time to relinquish that jurisdiction, its powers will be replaced through a supplementary Instrument of Accession by Federal powers.

In other cases, for instance railway lands, the juris-

diction of the Crown will cease in so far as corresponding and co-existing powers are assumed by Federal authorities.

In general a minimum period of 5 years is prescribed for the continuance of British Indian legislation in force in the States at the time of the passing of the Act under the provisions of the Foreign Jurisdiction Act, 1890 or otherwise.

CHAPTER IV

THE FEDERATION

I. *The Federal Executive*
II. *The Federal Legislature*

The outstanding feature of the Act is the provision which it makes for the establishment of the Federation of India. Within the Federation there will be united—

1. British India, that is to say, the Governors' Provinces and the Chief Commissioners' Provinces.

2. The Indian States which have acceded or may accede to the Federation.

It will be established by the Proclamation of His Majesty.

The Governor-General, who will exercise on behalf of His Majesty the executive authority of the Federation, will have special responsibilities. A Council of Ministers will aid and advise him.

There will be a Federal Legislature consisting of His Majesty, represented by the Governor-General, and two Chambers—the Council of State and the House of Assembly.

In this chapter are discussed the composition and functions of (1) the Federal Executive and (2) the Federal Legislature.

I. THE FEDERAL EXECUTIVE

The executive power and authority of the Federation is vested in the Governor-General of India as the representative of the King. In the course of the Parliamentary debates relating to the new Federal constitution, Sir Robert Horne described him as "the linch-pin of the whole system, the keystone of this mighty fabric".

The Governor-General is appointed by His Majesty by a Commission under the Royal Sign Manual and has—

(*a*) all such powers and duties as are conferred on him by or under the Act;

(*b*) such other powers of His Majesty (not being powers connected with the exercise of the functions of the Crown in its relations with Indian States) as His Majesty may be pleased to assign to him.

To each Governor-General the Crown will issue an Instrument of Instructions containing directions as to the way in which his functions are to be exercised.

All executive action of the Federal Government is to be taken in his name.

The extent of the executive authority of the Federation is defined by section 8. It covers—

(*a*) the matters with respect to which the Federal Legislature has power to make laws;

(*b*) the raising in British India on behalf of the Crown of naval, military and air forces and the govern-

ance of His Majesty's forces borne on the Indian establishment;

(c) the exercise of such rights, authority and jurisdiction as are exercisable by the Crown by treaty, grant, usage, sufferance, or otherwise in and in relation to the tribal areas.

Two important limitations are imposed on this authority. First, the Federal executive authority does not, save as expressly provided in the Act, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws. Secondly, in relation to a State which is a member of the Federation, the executive authority will only extend to such matters as the Ruler has accepted as falling within the federal sphere by his Instrument of Accession. The executive authority of the Ruler of a Federated State is, however, to continue to be exercisable in relation to matters with respect to which the Federal Legislature has power to make laws for that State. This provision is not to apply when the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law.

The Governor-General, as head of the Federal executive, has supreme command of the military, naval and air forces in India. This command, however, is subject to the power of His Majesty to appoint a Commander-in-Chief to exercise in relation to those forces such functions as may be assigned to him.

The drafting of legislative provisions for the administration of the Federal executive authority was a task of great difficulty. It was necessary to make a division of

responsibility; and the line of demarcation had to be such that provision was made both for the application of the principle of responsible government by Ministers who were themselves responsible to an elected Legislature, and for the security and stability of India. Many suggestions had been made by bodies and persons interested. Some were set out in the Report of the Statutory Commission, in the White Paper, and in the Report of the Joint Select Committee. The results of some six years' discussion and negotiations are contained in the Act.

The Reserved Subjects

Administrative functions with respect to defence, ecclesiastical affairs, foreign relations (excluding the relations between the Federation and any part of His Majesty's dominions), and the tribal areas are to be exercised by the Governor-General in his discretion. These are the reserved subjects. To assist him in the exercise of such functions, the Governor-General may appoint counsellors, not exceeding three in number. These counsellors will be responsible to the Governor-General alone, and will share none of the responsibility of the Federal Ministers to the Federal Legislature.

The provision empowering the Governor-General to appoint counsellors does not mean that, in relation to reserved subjects, he is forbidden to consult or collaborate with any other persons.

Council of Ministers

All other functions are to be exercised by the Governor-General with the help and on the advice of

a Council of Ministers, not exceeding ten in number, subject to the retention by the Governor-General of special powers and responsibilities. The Governor-General's Ministers are to be chosen and summoned by him and are to hold office during his pleasure. It is contemplated by the Act that Ministers shall be chosen from amongst the members of the Federal Legislature, for it is specifically provided that a Minister who for any period of six consecutive months is not a member of either Chamber of the Federal Legislature, shall, at the expiration of that period cease to be a Minister. The Governor-General in his discretion may preside at meetings of the Council of Ministers.

The Ministers have no constitutional right under the Act to tender advice upon a matter declared by the Act to be within the Governor-General's own discretion. There is nothing in the Act, as was noted above, to prevent the Governor-General from consulting them before making his own decision.

It is the duty of Ministers to transmit to the Governor-General all such information with respect to the business of the Federal Government as the Governor-General may require. In particular, a Minister must bring to the notice of the Governor-General any matter under his consideration which involves, or appears likely to involve, any special responsibility of the Governor-General.

Advocate-General of India

Provision is made for the appointment by the Governor-General of an Advocate-General. This official may be either a subject of a Federated State or of the Crown. He is to give advice to the Federal Government upon

such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Governor-General. In the performance of his duties, he is to have right of audience in all courts in British India. In the courts of a Federated State, the right of audience is confined to cases which involve Federal interests.

NOTE.—Sir Brojendra Lal Mitter, who has filled the offices of Advocate-General of Bengal and Law Member of the Executive Council of the Governor-General, has been appointed Advocate-General of India.

A HIGH COMMISSIONER

To assist the Federation in conducting business in the United Kingdom, the Act provides for the appointment by the Governor-General, exercising his individual judgment, of a High Commissioner, who is to perform on behalf of the Federation such functions in connection with the business of the Federation, and, in particular, in relation to the making of contracts, as the Governor-General may from time to time direct. The High Commissioner may, with the approval of the Governor-General and on such terms as may be agreed, undertake to perform on behalf of a Province or Federated State, or on behalf of Burma, functions similar to those which he performs on behalf of the Federation.

SPECIAL RESPONSIBILITIES

The matters in respect of which the Governor-General has a special responsibility are set out in section 12. They are as follows—

(a) the prevention of any grave menace to the peace or tranquillity of India or any part thereof;

(b) the safeguarding of the financial stability and credit of the Federal Government;

(c) the safeguarding of the legitimate interests of minorities;

(d) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under the Act and the safeguarding of their legitimate interests;

(e) the securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of the Act (which deals with discrimination) are designed to secure in relation to legislation;

(f) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment;

(g) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and

(h) the securing that the due discharge of his functions with respect to matters in relation to which he is by or under this Act required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

If and in so far as any special responsibility of the Governor-General is involved, he shall in the performance of his functions exercise his individual judgment as to the action to be taken.

It should be noticed that the Act does not restrict the Governor-General's special responsibility for the prevention of any grave menace to the peace to cases in which the menace arises from subversive movements or activities tending to crimes of violence.

In order to assist him in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federal Government, the Governor-

General may appoint a financial adviser, who is to hold office during his pleasure. This official is also to give advice to the Federal Government, whenever consulted, upon any matter relating to finance.

INSTRUMENT OF INSTRUCTIONS

In stating baldly that administrative functions with respect to the reserved subjects are to be exercised by the Governor-General in his discretion, that Ministers are to hold office during pleasure, and that if and in so far as any special responsibility is involved the Governor-General shall exercise his individual judgment as to the action to be taken, the Act provides merely the legal framework of the constitution. It was envisaged by the Imperial Parliament that a constitutional practice should evolve which would effect in increasing measure the establishment of extensive ministerial responsibility and control—and the regulator of such evolution was to be the Governor-General's Instrument of Instructions.

Since the issues involved in constitutional evolution are grave, provision is made under section 13, whereby Parliament may have some voice in the determination of its progressive stages. That section enacts that—

> 13.—(1) The Secretary of State shall lay before Parliament the draft of any Instrument of Instructions (including any Instrument amending or revoking an Instrument previously issued) which it is proposed to recommend His Majesty to issue to the Governor-General, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses

of Parliament praying that the Instrument may be issued.

(2) The validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

An Unprecedented Concession

Viscount Hailsham (the Lord Chancellor) pointed out in the House of Lords on 2nd July 1935 that section 13 (1) was an unprecedented concession to the control of Parliament. In the past, Instruments of Instructions to Governor-Generals and Governors of both the Dominions and the Colonies had been issued under the Prerogative; their form and contents had been decided by the Executive of the day. But having regard to the importance of the Instrument of Instructions under this new Constitution, and to the novelty of some of the points which would arise, the Government had thought it right to ask Parliament to undertake a responsibility which it had hitherto never imagined that it would be called upon to discharge—namely, to enter into consultation with the Executive with regard to the Instrument of Instructions. Viscount Hailsham went on to observe that the Instrument still remained a document issued under the Prerogative, on the advice of the Executive. What would actually happen, as the Government saw it, was that when the Instrument of Instructions was brought before Parliament any point of difficulty or objection which occurred to either House would be ventilated and discussed. If either House felt that there was a grave objection to the form

of the Instrument, it would be open to the Government to withdraw that particular Instrument and substitute words to meet the objection.

In February 1935 a draft Instrument of Instructions to the Governor-General (Cmd. 4805) was presented to Parliament by the Secretary of State for India as illustrating the contents of the document which the Government had in mind. The draft was based in the main on recommendations of the Joint Select Committee, and also contained some passages and phrases which have been used in the past in Instructions to the Governor-General.

Since full appreciation of the working and spirit of the constitution depends in part upon an understanding of the constitutional practices which it is hoped will evolve, this work would be incomplete without some reference to the terms of the draft. Three objects would seem to be envisaged: first, the indication of the principles upon which the Governor-General is to exercise his functions; secondly, the regulation of his relations with his ministers; and thirdly, the political interpretation and construction to be placed upon his special responsibilities.

Pursuant to the first object the draft provides that the Governor-General shall do all that in him lies to maintain standards of good administration; to encourage religious toleration, co-operation among all classes and creeds; and to promote all measures making for moral, social and economic welfare.

Ministerial Responsibility

More detailed instructions regulate his relations with his ministers. In making appointments to his Council

of Ministers, the Governor-General is to use his best endeavours to select as Ministers in consultation with the person who, in his judgment, is most likely to command a stable majority in the Legislature, those persons (including so far as practicable representatives of the Federated States and members of important minority Communities) who will best be in a position collectively to command the confidence of the Legislature. But in so acting, he is to bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

In all matters within the scope of the executive authority of the Federation, save in respect of those functions which he is required by the Act to exercise in his discretion, the Governor-General is in the exercise of the powers confirmed upon him to be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which the Act has committed to him, or with the proper discharge of any of the functions which he is required to exercise in his individual judgment. In either set of circumstances the Governor-General is, notwithstanding his Ministers' advice, to act in exercise of the powers which the Act confers upon him in such manner as to his individual judgment seems requisite for the due discharge of his special responsibilities and functions.

But in thus exhorting the Governor-General to perform his constitutional duties, the draft does not suggest (nor indeed could it rightly suggest) that the declaration of a special responsibility in connection with a particular matter means that on every occasion when a question relating to that matter comes up for

discussion, the decision is to be that of the Governor-General to the exclusion of his Ministers. In no sense does such a declaration define a sphere from which the action of the Ministers is excluded: it does no more than indicate a sphere in which it will be constitutionally proper for the Governor-General, after receiving ministerial advice, to signify his dissent from it and even to act in opposition to it, if, in his own unfettered judgment, he is of the opinion that the circumstances of the case so require.

Federal Ministers and Defence

Even though the Ministers have no constitutional right under the Act even to tender advice upon a matter declared by the Act to be within the Governor-General's own discretion, the draft Instrument of Instructions states that "it is Our will and pleasure that Our Governor-General shall encourage the practice of joint consultation between himself, his Counsellors and his Ministers" upon problems covered by the reserved subjects. In this connection the draft reveals the desire which has been manifested by Parliament that the Federal Ministry should be invited to collaborate with the Governor-General to the widest extent compatible with the preservation of necessary safeguards upon matters relating to Defence. It is appreciated that the Defence of India must to an increasing extent be the concern of the Indian people.

In the past there have been many occasions on which the Government of India have found themselves able to spare contingents for operations overseas in which considerations of Indian Defence have not been involved: such occasions may recur. It would indeed be unfor-

tunate if the new constitution forbad the Governor-General to seek the opinions of India's representatives upon such an occasion. Under the Act, if in the future the Governor-General is asked if he can lend a contingent for operations overseas, it is submitted that he must decide, first, whether the occasion involves the defence of India in the widest sense, and, secondly, whether he can spare the troops having regard to all the circumstances at the time. Decisions on both points must be made on his own responsibility. If the Governor-General decides that the campaign does not involve the defence of India in the broadest sense, the constitutional practice envisaged both by the Report of the Joint Select Committee and the draft Instrument of Instructions would seem to indicate that he should not agree to lend troops without consultation with the Federal Ministry.

Financial Stability

The draft contains detailed instructions as to the principles upon which the Governor-General should act in discharging his special responsibilities. It is intended that in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federation the Governor-General shall in particular make it his duty to see that a budgetary or borrowing policy is not pursued which would, in his judgment, seriously prejudice the credit of India in the money markets of the world, or affect the capacity of the Federation duly to discharge its financial obligations.

Interests of Minorities

In safeguarding the legitimate interests of minorities, the Governor-General is asked to secure that those

religious or racial communities for the members of which special representation is accorded in the Federal Legislature, and those classes who, whether on account of the smallness of their number or their lack of educational advantages or from any other cause, cannot as yet fully rely for their welfare on joint political action in the Federal Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. This special responsibility, however, is not intended to be used for the protection of a body of persons by reason only that such persons share a view on a particular question which has not found favour with the majority.

Trade Agreements

In the discharge of his special responsibility for the prevention of measures which would subject goods of United Kingdom origin imported into India to discriminatory or penal treatment, the Governor-General is asked to avoid action which would affect the competence of his Government and of the Federal Legislature to develop their own fiscal and economic policy, or would restrict their freedom to negotiate trade agreements whether with the United Kingdom or with other countries for the securing of mutual tariff concessions. He is to intervene in tariff policy or in the negotiation of tariff agreements only if, in his opinion, the main intention of the policy contemplated is, by trade restrictions, to injure the interests of the United Kingdom rather than to further the economic interests of India. Above all it is to be remembered that the Imperial Parliament in conferring upon the Governor-General this special responsibility did not intend that it should

be used in a manner which would adversely affect the partnership between India and the United Kingdom within the Empire which has so long subsisted.

Protecting the Rights of States

In protecting the rights of any Indian State, the Governor-General is required to see that no action shall be taken by his Ministers and no Bill of the Federal Legislature shall become law, which would imperil the economic life of any State or affect prejudicially any right of any State, whether derived from treaty, grant, usage, sufferance or otherwise, not being a right appertaining to a matter in respect to which, in virtue of the Ruler's Instrument of Accession, the Federal Legislature may make laws for his State and his subjects. Further, it will be remembered that the Governor-General is bound to protect not only the rights of the State itself, but also the rights and dignity of its ruler. A White Paper (Cmd. 4903), which was issued to explain amendments to be moved on the Report Stage in the House of Commons, stated that the words "and the rights and dignity of the Ruler thereof" were intended to provide the means of securing for the Rulers recognition of the personal status which has always been accorded to them in British India.

Finally, it is important to note the constitutional significance of the Governor-General's special responsibility for securing that the due discharge of his functions with respect to matters in relation to which he is required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

The Final Responsibility

The constitutional position is illustrated by the problems surrounding the defence of India. As co-operation between the Department of Defence and other departments may be necessary in time of emergency, it is essential for the security of India that, whenever defence policy is concerned, the Department charged therewith should be able to ensure that its views prevail in the event of a difference of opinion with any other department. The special responsibility given to the Governor-General with respect to any matter affecting the administration of reserve subjects will enable him in the last resort to secure that action is not taken in the ministerial sphere which might conflict with defence policy.

In addition, the Governor-General will be able to avail himself of the power which the Federal Government possesses under section 126 to give directions as to the manner in which the executive authority in the Provinces is to be exercised in relation to any matter affecting the administration of a Federal subject, since defence is none the less a Federal subject because reserved. Thus the maintenance of communications, especially in mobilisation, is a vital military necessity, and the Governor-General has power in case of need to issue directions to the authority in charge of railways, or to require the Minister in charge of communications to take such action as the Governor-General may deem advisable. In the provincial sphere questions may arise with regard to the control of lands, buildings or equipment maintained or required by the Department of Defence, or with regard to such matters as facilities for

manœuvres or the efficiency and well-being of defence personnel stationed in provincial areas, or, in times of emergency, with regard to the guarding of railways and bridges. In all matters of this kind when there is a difference of opinion with other authorities, the final responsibility for a decision, if defence policy is concerned, rests with the Governor-General; his views must prevail, and under the Act he has adequate means of giving effect to them.

Section 14 provides that in so far as the Governor-General is required to act in his own discretion or to exercise his individual judgment, he shall be under the general control of, and comply with, such particular directions, if any, as may from time to time be given to him by the Secretary of State. It is interesting to compare this section with the Government of India Act 1915, section 33, under which the superintendence, direction and control of the civil and military government of India was vested in the Governor-General in Council. He was, however, required by the same section to pay, in connection with the exercise of all his functions, due obedience to all such orders as he received from the Secretary of State.

II. THE FEDERAL LEGISLATURE

Provision is made under the Act for the establishment of a Federal Legislature, which is to consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State and the House of Assembly.

The Council of State is to consist of 156 representatives of British India and not more than 104 representatives of the Indian States.

Of the 156 seats to be filled by representatives of British India 150 seats are to be allocated to Governors' Provinces, Chief Commissioners' Provinces and Communities. Six seats are to be filled by persons chosen by the Governor-General in his discretion.

From the draft Instrument of Instructions to the Governor-General it would appear that it is the intention of Parliament that the Governor-General's power to nominate representatives of British India for seats in the Council of State shall be used by him to redress inequalities of representation which have resulted from election. In particular, he is to bear in mind the necessity of securing representation for the Scheduled Castes and women.

The Council of State is to be a permanent body, not subject to dissolution, but, as near as may be, one-third of its members are to retire in every third year.

The House of Assembly is to consist of 250 representatives of British India and not more than 125 representatives of the Indian States.

Every House of Assembly, unless sooner dissolved, is to continue for five years from the date appointed for their first meeting and no longer. The expiration of this period of five years is to operate as a dissolution of the Assembly.

No person is to be qualified to represent any part of British India in the Federal Legislature unless he—

(*a*) is a British subject, or the Ruler or a subject of an Indian State which has acceded to the Federation;

(*b*) is, in the case of a seat in the Council of State, not less than thirty years of age, and, in the case of a

seat in the Federal Assembly, not less than twenty-five years of age; and

(*c*) possesses such, if any, of the other qualifications as may be appropriate to his case. For example, under paragraph 23 (*b*) of Part I of the First Schedule to the Act, the representative of the landholders in the House of Assembly is himself to be a landholder.

The principles upon which the Federal Legislature was to be constituted were the subject of much discussion. The attempt to provide a legislative body which is to be representative of nearly 350 millions is one without precedent in the constitutional history of any country.

Direct Election to Council of State

The White Paper and the Report of the Joint Select Committee suggested that elections to the Council of State in respect of British India seats should be indirect, the representatives being chosen by the members of the Provincial Legislatures. Parliamentary criticisms of this suggestion resulted in the substantial adoption of the principle of direct election to this Chamber.

Under the Act the representatives of British India in the Council of State are to be chosen by the communities. The Hindu, Sikh and Muhammadan communities are to choose their representatives by voting in territorial constituencies. Indirect election is retained for the representatives of the Anglo-Indian, European and Indian Christian communities. Their representatives are to be chosen by the members of Electoral Colleges consisting of such Anglo-Indians, Europeans and Indian Christians, as the case may be, as are members of the Legislative

Council of any Governor's Province or of the Legislative Assembly of such a Province.

The representatives of the States in the Council of State are to be appointed by the Rulers of the States concerned. Difficult questions arose with regard to the allocation among over 600 States, Estates and Jagirs, which constitute the non-British portion of India, of the 104 seats available for the States as a whole. Discussion between the Governor-General and the Rulers resulted in the enunciation of a principle which met with a large measure of support among the States and which has been adopted by the Act. This principle is that the allocation of seats among the States in the Council of State should take account of the relative rank and importance of the State as indicated by the dynastic salute and other factors. Thus Hyderabad, which is the largest State in India and whose Ruler is entitled to a salute of 21 guns, is to have five seats in the Council of State. The other 21-gun States, namely Mysore, Kashmir, Gwalior and Baroda are each to have three seats. The smaller States are to be divided into groups, each State being represented in turn. Thus in central India three 11-gun States, namely Jhabua, Sailana and Sitamau are to form a group. That group is entitled to one seat, and the Rulers will nominate the representative in turn.

No person is to be appointed as a representative of a State in either Chamber of the Federal Legislature unless he—

(i) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation; and

(ii) is, in the case of a seat in the Council of State, not

less than thirty years of age and, in the case of a seat in the Federal Assembly, not less than twenty-five years of age. Restrictions on age are not to apply to a Ruler who is exercising ruling powers.

The House of Assembly

The principles to be followed in the election of representatives to the House of Assembly have been even more difficult to enunciate. Direct election has the support of Indian opinion. It has been the system in India under the Government of India Act 1919. The Report of the Joint Select Committee doubted the probative value of this experiment having regard to the proposed extension of the franchise. The draftsmen of the Act were met by the difficulty of applying the representative system on a basis of direct representation to an electorate of the proposed magnitude. On the one hand, if the constituencies were to be of a reasonable size, the resultant Chamber would be unmanageably large; if, on the other hand, the Chamber were of a reasonable size, the constituencies on which it was based would necessarily be enormous. Where a single constituency may be more than twice as large in area as the whole of Wales a candidate for election could not in any event, quite apart from obstacles presented by differences in language and a widespread illiteracy, commend or even present his views to the whole body of electors, even if the means of communication were not, as in India, difficult and even non-existent; nor could a member after election hope to guide or inform opinion in his constituency.

Under such conditions it would be impossible for a representative to perform the functions which Burke described in *A Letter to the Electors of Bristol* and which have since been recognised as essential to the success of any representative system. "It ought", wrote Burke, "to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and the most unreserved communication with his constituents; their wishes ought to have great weight with him, their opinion high respect, and their business his unremitted attention."

The perception of these difficulties resulted in the Joint Select Committee rejecting proposals for direct election. Their Report stated—

> "We realise the strength of Indian opinion in this matter, and we are far from denying that the present system has produced legislators of high quality; but we are now recommending to Parliament the establishment of self-government in India, and we regard it as fundamental that the system of election to the Central Legislature should be such as to make the responsibility of a member to those who elect him a real and effective responsibility. We do not think that this can be secured under a system of direct election proposed in the White Paper, and, though we are conscious that we are reversing the decision made by Parliament in 1919, we have come to the conclusion, notwithstanding the theoretical objections which can be urged against it, that there is no alternative to the adoption of some form of indirect election."

Hence under the Act the Federal House of Assembly

is to be, in the main, elected by the Provincial Assemblies.

Details of the distribution of seats are set out in the Appendix. It will be seen that the majority of the seats are to be distributed on a communal basis. Accordingly the Hindu, Muhammadan and Sikh seats will be filled by the representatives of those communities in the Provincial Assemblies voting separately for a prescribed number of communal seats. Within the Hindu group special arrangements are to be made for the Depressed Classes. In addition there are to be seats for—

1. Europeans.
2. Anglo-Indians.
3. Indian Christians.
4. Representatives of commerce and industry.
5. Landholders.
6. Representatives of labour.
7. Women.

Since the representation of the above communities and interests in the Provincial Assemblies will be small, the general scheme outlined above for the three great communities is not to apply. Seats in the Federal House of Assembly allocated to Europeans, Anglo-Indians, Indian Christians and women are to be filled by the representatives of these groups in the Provincial Assemblies voting in *ad hoc* electoral colleges. Persons to fill the seats allocated to representatives of commerce and industry, landholders and representatives of labour are to be chosen—

(*a*) in the case of a seat allotted to a Province which is to be filled by a representative of commerce and

industry, by Chambers of Commerce and similar associations;

(*b*) in the case of a seat allotted to a Province which is to be filled by a landholder, by landholders voting in territorial constituencies;

(*c*) in the case of a seat allotted to a Province which is to be filled by a representative of labour, by labour organisations;

(*d*) in the case of one of the non-provincial seats which are to be filled by representatives of commerce and industry, by Associated Chambers of Commerce; in the case of another such seat by Federated Chambers of Commerce and in the case of a third such seat by commercial bodies in Northern India;

(*e*) in the case of the one non-provincial seat which is to be filled by a representative of labour, by labour organisations.

Allocation of seats in the Federal House of Assembly among the States is to proceed on the principle that the number of seats allotted to each State or group of States should be proportionate to their population. Thus Hyderabad, with a population of 14,000,000, is to have fourteen seats, while Bikaner, with a population of 900,000, is to have one seat.

Governor-General and the Chambers

The Act provides that the Chambers of the Federal Legislature are to be summoned to meet once at least in every year. The interval between sessions must be less than twelve months. Subject to this provision the

Governor-General may in his discretion from time to time—

(*a*) summon the Chambers or either Chamber to meet at such time and place as he thinks fit;
(*b*) prorogue the Chambers;
(*c*) dissolve the House of Assembly.

The Governor-General may in his discretion address either Chamber of the Federal Legislature or both Chambers assembled together, and for that purpose require the attendance of members. He may also in his discretion send messages to either Chamber whether with respect to a Bill then pending in the Legislature or otherwise. A Chamber receiving such a message is to consider with all convenient dispatch the matters indicated in it.

Every minister and every counsellor is to have the right to speak in, and otherwise participate in the proceedings of, either Chamber, any joint sitting of the Chambers, and any committee of the Legislature of which he may be named a member.

A President and a Speaker

The Council of State and the House of Assembly are to choose from among their members respectively a President and a Speaker to preside over these Chambers. A member holding office as President of the Council of State or as Speaker of the House of Assembly is to vacate his office if he ceases to be a member of the Chamber over which he presides. He may at any time resign his office by writing under his hand addressed to the Governor-General; and he may be removed from his office by a resolution of the Council or Assembly, as the

case may be, passed by a majority of all its then members. No resolution for this purpose, however, is to be moved unless at least fourteen days' notice has been given of the intention to move the resolution. In addition, it should be noted that the Speaker is not to vacate his office until immediately before the first meeting of the Assembly after the dissolution.

All questions at any sitting or joint sitting of the Chambers are to be determined by a majority of votes of the members present and voting, other than the President or Speaker or person acting as such. The President and Speaker are not to vote in the first instance, but they are to have and exercise a casting vote in the case of an equality of votes.

A Chamber of the Federal Legislature is to have power to act notwithstanding any vacancy in its membership. The validity of the proceedings of the Legislature is not to be questioned merely because it was subsequently discovered that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

The quorum for both Chambers is fixed at one-sixth of the total membership of each.

Every member of either Chamber is, before taking his seat, to make and subscribe before the Governor-General, or some person appointed by him, an oath or affirmation of allegiance.

Section 25 of the Act makes provision for the vacation of seats. No person is to be a member of both Chambers; and rules made by the Governor-General are to provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other. If a member of either Chamber—

(*a*) becomes subject to any of the disqualifications set out below; or

(*b*) by writing under his hand addressed to the Governor-General resigns his seat,

his seat shall thereupon become vacant. If for sixty days a member of either Chamber is without permission of the Chamber absent from all its meetings, the Chamber may declare his seat vacant.

Grounds of Disqualification

Under section 26 a person is to be disqualified for being chosen as, and for being, a member of either Chamber—

(*a*) if he holds any office of profit under the Crown in India other than an office declared by Act of the Federal Legislature not to disqualify its holder;

(*b*) if he is of unsound mind and stands so declared by a competent court;

(*c*) if he is an undischarged insolvent;

(*d*) if, whether before or after the establishment of the Federation, he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council or by an Act of the Federal Legislature to be an offence or practice entailing a disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf by the provisions of that Order or Act;

(*e*) if, whether before or after the establishment of the Federation, he has been convicted of any other offence by a court in British India or in a State which is a Federated State and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor-General, acting in his discretion, may allow in any particular case, has elapsed since his release;

(*f*) if, having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under the Act or by any Act of the Federal or the Provincial Legislature, unless five years have elapsed from the date by which the return ought to have been lodged, or the Governor-General, acting in his discretion, has removed the disqualification. Such disqualification, however, is not to take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor-General, acting in his discretion, may in any particular case allow.

In addition, a person is not to be capable of being chosen a member of either Chamber while he is serving a sentence of transportation or of imprisonment for a criminal offence.

For the purposes of this section a person is not to be deemed to hold an office of profit under the Crown in India by reason only that—

(*a*) he is a minister either for the Federation or for a Province; or

(*b*) while serving a State, he remains a member of one of the services of the Crown in India and retains all or any of his rights as such.

A penalty of 500 rupees is imposed upon any person who sits or votes as a member of either Chamber when he is not qualified, or when disqualified.

Privileges of Members

The Act follows the principles of the British Constitution in providing for freedom of speech in the Legislature. Two constitutional restrictions are placed on this privilege. First, no discussion is to take place in the Federal Legislature with respect to the conduct of any judge of the Federal Court or a High Court in the discharge of his duties. Secondly, if the Governor-General, in his discretion, certifies that the discussion of a Bill or amendment of a Bill would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of India, he may direct that no proceedings, or no further proceedings, shall be taken in relation to that Bill or amendment.

In addition, under section 38, the Governor-General may, in his discretion, after consultation with the President or the Speaker as the case may be, make rules—

(*a*) for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State, other than a matter with respect to which the Federal Legislature has powers to make laws for that State, unless the Governor-General, in his discretion, is satisfied that the matter affects

Federal interests or affects a British subject, and has given his consent to the matter being discussed or the question being asked;

(*b*) for prohibiting, save with the consent of the Governor-General, in his discretion—

(i) the discussion of, or the asking of questions on, any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince; or

(ii) the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, any matter connected with the tribal areas or the administration of any excluded area; or

(iii) the discussion of, or the asking of questions on, any action taken, in his discretion, by the Governor-General in relation to the affairs of a Province; or

(iv) the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State, or of a member of its ruling family.

Section 28 provides that no member of the Legislature is to be liable to any proceedings in any court in respect to anything said or any vote given by him in the Legislature or in any of its committees. This privilege only extends to what is said or done within the Legislature itself. It has been held in England that where a Member of Parliament procured the insertion in a newspaper of a defamatory speech made in the House of Commons, he could be proceeded against for libel (R. *v.* Creevy, 1 M. & S. 273).

In other respects the privileges of members of the

Chambers are to be such as may from time to time be defined by Act of the Federal Legislature and, until so defined, are to be such as were immediately before the establishment of the Federation enjoyed by members of the Indian Legislature.

Section 28 (3) provides that nothing in this Act nor in any existing Indian Act is to be construed as conferring, or empowering the Federal Legislature to confer, on either Chamber or on both Chambers sitting together, or on any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner. Hence it follows that the Legislature has no jurisdiction under the Act to conduct an impeachment nor commit persons for contempt. Provision, however, may be made by an Act of the Federal Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of the committee so to do.

Members of either Chamber are to be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Federal Legislature. Until such provision is made, allowances will be at such rates and upon such conditions as immediately before the date of the establishment of the Federation were applicable in the case of members of the Legislative Assembly of the Indian Legislature.

All proceedings in the Federal Legislature are to be conducted in the English language. Members unacquainted, or not sufficiently acquainted, with English may use another language.

Legislative Procedure

Bills, other than financial Bills, may originate in either Chamber. In general, a Bill is not to be deemed to have been passed by the Chambers of the Legislature unless it has been agreed to by both Chambers, either without amendment or with such amendments only as are agreed to by both Chambers. If after a Bill has been passed by one Chamber and transmitted to the other Chamber—

(*a*) the Bill is rejected by the other Chamber; or

(*b*) the Chambers have finally disagreed as to the amendments to be made in the Bill; or

(*c*) more than six months elapse from the date of the reception of the Bill by the other Chamber without the Bill being presented to the Governor-General for his assent,

the Governor-General may, unless the Bill has lapsed by reason of a dissolution of the Assembly, notify the Chambers, by message if they are sitting or by public notification if they are not sitting, of his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill. If, however, it appears to the Governor-General that the Bill relates to finance or to any matter which affects the discharge of his functions in so far as he is required to act in his discretion or to exercise his individual judgment, he may summon a joint sitting, even though the above conditions have not been fulfilled, if he is satisfied that there is no reasonable prospect of the Bill being presented to him for assent without undue delay.

Where the Governor-General has notified his intention

of summoning a joint sitting, neither Chamber is to proceed further with the Bill. If at the joint sitting the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it is to be deemed to have been passed by both Chambers.

When a Bill has been passed by the Chambers it is then to be presented to the Governor-General, who may take one of four courses—

(1) he may assent in His Majesty's name to the Bill; or

(2) he may withhold assent; or

(3) he may reserve the Bill for the signification of His Majesty's pleasure; or

(4) he may return the Bill to the Chambers with a message requesting them to reconsider the Bill or any specified provisions of it and, in particular, the desirability of introducing any such amendments as he may recommend in his message. It is to be the duty of the Chambers to reconsider the Bill accordingly.

A Bill reserved for the signification of His Majesty's pleasure is not to become an Act of the Federal Legislature unless and until, within twelve months from the day on which it was presented to the Governor-General, the Governor-General makes known by public notification that His Majesty has assented to it.

The draft Instrument of Instructions to the Governor-General which was placed before the Imperial Parliament in February 1935 (Cmd. 4805) indicated the type of Bill which it was thought advisable for the Governor-General to reserve for the signification of His Majesty's

pleasure. If the draft is adopted it will be the Governor-General's duty to reserve the following classes of Bill—

(*a*) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;

(*b*) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court of any Province as to endanger the position which these Courts are by the Act designed to fill;

(*c*) any Bill passed by a Provincial Legislature and reserved for his consideration which would alter the character of the Permanent Settlement;

(*d*) any Bill which he feels doubt whether it does or does not offend against the purposes of Chapter III, Part V of the Act [which deals with discrimination].

Further, in the House of Lords on 18th July 1935 the Marquess of Zetland (without wishing to bind himself to the actual words) said that in addition he would propose to insert some such words as these—

"In considering whether or not he shall assent in Our name to any Bill other than a Bill of any of the classes enumerated in the foregoing sub-paragraphs [which deal with the reservation of Bills] Our Governor-General shall, without prejudice to his power to withhold his assent upon any ground whatsoever, have special regard to the effect of the Bill upon any of his special responsibilities."

Power is reserved to the Crown to disallow any Act assented to by the Governor-General. This power is to be

exercised within twelve months from the day of the Governor-General's assent; and where any Act is so disallowed the Governor-General is immediately to make the disallowance known by public notification. From that date the Act is void.

The Federal Estimates

The Governor-General is to cause to be laid before both Chambers of the Federal Legislature in respect of every financial year an "annual financial statement" setting out the estimated receipts and expenditure of the Federation for that year. The estimates of expenditure embodied in the annual financial statement are to show separately—

(*a*) the sums required to meet expenditure charged upon the revenues of the Federation; and

(*b*) the sums required to meet other expenditure proposed to be made from the revenues of the Federation.

These estimates are also to indicate the sums, if any, which are included solely because the Governor-General has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

Section 33 (3) sets out the items of expenditure which are to be charged on the revenues of the Federation—

(*a*) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order in Council;

(*b*) debt charges for which the Federation is liable, including interest, sinking fund charges and re-

demption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(*c*) the salaries and allowances of ministers, of counsellors, of the financial adviser, of the Advocate-General, of chief commissioners, and of the staff of the financial adviser;

(*d*) the salaries, allowances, and pensions payable to or in respect of judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court;

(*e*) expenditure for the purpose of the discharge by the Governor-General of his functions with respect to the reserved subjects;

(*f*) the sums payable to His Majesty under the Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States;

(*g*) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas;

(*h*) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(*i*) any other expenditure declared by the Act or any Act of the Federal Legislature to be so charged.

Items of expenditure so charged upon the revenues of the Federation are not to be submitted to the vote of the Legislature. Section 34 (1), however, enacts that this provision is not to be construed as preventing the discussion in either Chamber of the Legislature of any of

these estimates other than those concerned with the salary and allowances of the Governor-General and the sums payable to His Majesty out of the revenues of the Federation in respect of expenses incurred in discharging the functions of the Crown in its relations with Indian States.

It will be observed that most of these Heads of Expenditure are identical with, or analogous to, payments which would in the United Kingdom be described as Consolidated Fund charges and as such would not be voted annually by Parliament. The principal exception is the salaries of ministers which in the United Kingdom are voted annually.

Principle of Public Finance

All other estimates are to be submitted in the form of demands for grants to the Federal Assembly and thereafter to the Council of State. No demand for a grant, however, is to be made except on the recommendation of the Governor-General. According to the Report of the Joint Select Committee, this rule was introduced in order to secure observance of the well-recognised principle of public finance that no proposal for the imposition of taxation or for the appropriation of public revenues, nor any proposal affecting or imposing any charge upon those revenues, should be made otherwise than on the responsibility of the Executive. In furtherance of this principle section 37 (1) enacts that a Bill or amendment making provision—

(*a*) for imposing or increasing any tax; or

(*b*) for regulating the borrowing of money or the giving of any guarantee by the Federal Government,

or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Federal Government; or

(*c*) for declaring any expenditure to be expenditure charged on the revenues of the Federation, or for increasing the amount of any such expenditure,

is not to be introduced or moved except on the recommendation of the Governor-General; and a Bill making such provision is not to be introduced in the Council of State.

Either Chamber is to have power to assent to or refuse a demand, or to assent to a demand subject to a reduction of the amount specified in it. Where, however, the Assembly have refused to assent to a demand, that demand is not to be submitted to the Council of State unless the Governor-General so directs; and where the Assembly have assented to a demand subject to a reduction of the amount specified in it, a demand for the reduced amount only is to be submitted to the Council of State, unless the Governor-General otherwise directs. If the Chambers differ with respect to any demand, the Governor-General is to summon the two Chambers to meet in a joint sitting for the purpose of deliberating and voting on the demand as to which they disagree; and the decision of the majority of the members of both Chambers present and voting is to be deemed to be the decision of the two Chambers.

After demands have been assented to by the Chambers the Governor-General is to authenticate by his signature a schedule specifying—

(*a*) the grants made by the Chambers;

(*b*) the several sums required to meet the expenditure

charged on the revenues of the Federation but not exceeding, in the case of any sum, the amount shown in the statement previously laid before the Legislature.

If the Chambers have not assented to any demand for a grant or have assented subject to a reduction of the amount specified in it, the Governor-General may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge those responsibilities.

When the schedule has been authenticated by the Governor-General it is to be laid before both Chambers but is not to be open to discussion or vote.

If in the course of a year further expenditure from the revenues of the Federation becomes necessary over and above the expenditure already authorised, a supplementary financial statement is to be laid before both Chambers. Procedure in respect of such supplementary financial statements is to be the same as for the annual financial statement.

It will be observed that on proposals for appropriation, other than those relating to items of expenditure charged upon the revenues of the Federation or necessary for the due discharge of the Governor-General's special responsibilities, the Legislature will have the final decision. The Report of the Joint Select Committee suggested that this power in the matter of supply will give the Legislature its real control over the Executive.

CHAPTER V

PROVINCIAL AUTONOMY

I. *The Provincial Executives*
II. *The Provincial Legislatures*

"THE Provinces are the domain", wrote the authors of the Montagu-Chelmsford Report, "in which the earlier steps towards the progressive realisation of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit."

Effect was given to this suggestion by the Government of India Act 1919, which, by earmarking certain subjects as "Provincial subjects", created a sphere within which responsibility for the functions of government rested primarily upon the Provincial authorities; but that responsibility was not exclusive, since the Governor-General in Council and the Central Legislature continued to exercise an extensive authority throughout the whole of the Provinces.

The Statutory Commission recommended that the process of devolution begun by the Government of India Act 1919 should be completed. "It is our intention", they reported, "that in future each province should be as far as possible mistress in her own house."

The Joint Select Committee accepted the principle of Provincial Autonomy. Of all the proposals for the reconstituted government of India it was, they pointed

out, the one which had received the greatest measure of support on every side. The economic, geographical and racial differences between the Provinces on the one hand and the sense of provincial individuality on the other made such support, they said, almost inevitable.

The establishment of Provincial Autonomy forms the subject-matter of Part III of the Act, which is devoted to the Governors' Provinces. Section 320 provided that Part III was to come into operation "on such date as His Majesty in Council may appoint".

On 1st July 1935 the Marquess of Zetland (Secretary of State for India) announced in the House of Lords that a condition precedent to the establishment of Provincial Autonomy would be the holding of an expert financial inquiry in India. The Government appointed Sir Otto Niemeyer to make the inquiry. He proceeded to India and discussed the financial position with the financial authorities of each Province and with the finance Department of the Government of India. His Report was made to the Secretary of State for India on 6th April 1936, and was presented to Parliament the same month (Cmd. 5163). The Government were then in a position to decide the date on which Provincial Autonomy was to be established.

On 3rd July 1936, the Government of India (Commencement and Transitory Provisions) Order 1936 was made whereby Provincial Autonomy was established on 1st April 1937.

In this chapter are discussed the composition and functions of (1) the Provincial Executives and (2) the Provincial Legislatures.

I. THE PROVINCIAL EXECUTIVES

Section 46 of the Act provides that there shall be eleven Governors' Provinces, namely—

1. Madras.
2. Bombay.
3. Bengal.
4. The United Provinces.
5. The Punjab.
6. Bihar.
7. The Central Provinces and Berar.
8. Assam.
9. The North-West Frontier Province.
10. Orissa.
11. Sind.

Of these Provinces, Orissa and Sind were created by Orders in Council (S.R. & O., 1936, Nos. 164-165) made pursuant to the provision of section 289.

Section 290 enacts that the Crown by Order in Council may—

(*a*) create a new Province;
(*b*) increase the area of any Province;
(*c*) diminish the area of any Province;
(*d*) alter the boundaries of any Province.

A proviso to the section adds, however, that, before the draft of any such Order is laid before Parliament the Secretary of State shall take such steps as His Majesty may direct for ascertaining the views of the Federal Legislature and the views of the Government and the Chamber or Chambers of the Legislature of any Province which will be affected by the Order. These

preliminary consultations are to be directed towards both the proposal to make the Order and the provisions to be inserted in it.

In form the Provincial Executive is similar to that of the Federation. The executive authority of a Province is exercised on behalf of the Crown by the Governor. He receives his appointment from the King by a Commission under the Royal Sign Manual, and is constitutionally responsible to the Governor-General. To him is issued an Instrument of Instructions; and this document will be found in the Appendix. His functions are exercised with the help and on the advice of a Council of Ministers, subject to his retention of special powers and responsibilities.

The Provincial Ministers are chosen by the Governor of the Province and hold office at his pleasure. They have the same duties in relation to Provincial affairs as the Federal Ministers will have in connection with Federal affairs. Included amongst these duties is that of transmitting to the Governor all such information with respect to the business of the Provincial Government as the Governor may require.

Provision is made for the appointment of an Advocate-General for the Province, whose duty it is to give advice to the Provincial Government upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor.

Special Responsibilities

The Federal and Provincial executives differ, however, in a number of important respects.

First, the executive authority of each Province only extends to the matters with respect to which the Legislature of the Province has power to make laws. Details of these powers are set out in the Appendix.

Secondly, in the exercise of his functions the Governor of a Province has the following special responsibilities—

(a) the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof;

(b) the safeguarding of the legitimate interests of minorities;

(c) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests;

(d) the securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of the Act (which deals with discrimination) are designed to secure in relation to legislation;

(e) the securing of the peace and good government of areas which by or under the provisions of the Act are declared to be partially excluded areas;

(f) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and

(g) the securing of the execution of orders or directions lawfully issued to him under Part VI of the Act (which deals with administrative relations) by the Governor-General in his discretion.

It should be noted that a Governor, unlike the Governor-General, has no special responsibility for—

(1) the safeguarding of the financial stability and credit of either the Federal Government or his Province;

(2) the prevention of action which would subject the goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment;

(3) the securing of the due discharge of functions with respect to reserved subjects.

The Governors' special responsibility for securing the execution of orders lawfully issued by the Governor-General was included in order to ensure that whenever the Governor-General desired to exercise powers which required the co-operation of Provincial administrations the Governors should be in a position to give effect to any directions or orders of the Governor-General to this effect, even if the execution of any such directions or orders was not acceptable to their own Ministers.

Crimes of Violence

A third difference between the Federal and Provincial executives arises from the fact that the Act does not reserve any subjects for the consideration of the Governors. The Act, however, provides that —

57.—(1) If it appears to the Governor of a Province that the peace or tranquillity of the Province is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit, crimes of violence which, in the opinion of the Governor, are intended to overthrow the government as by law established, the Governor may, if he thinks that the circumstances of the case require him so to do for the purpose of combating those operations, direct that his functions shall, to such extent as may be specified in the direction, be exercised by him in his discretion and, until otherwise provided by a subsequent direction

of the Governor, those functions shall to that extent be exercised by him accordingly.

If any Governor decides to exercise this power, he is further authorised, at his own discretion, to appoint an official as a temporary member of the Legislature to act as his mouthpiece in that body, and any official so appointed has the same powers and rights, other than the power to vote, as an elected member.

The powers given to the Governors under section 57 are powers which are over and above their special responsibility for the prevention of any grave menace to peace and tranquillity; and were conferred, according to the Report of the Joint Select Committee, in order to ensure that the measures taken to deal with terrorism and other activities of revolutionary conspirators should not be less efficient and unhesitating under the Act than they have been in the past.

In order to further this object, section 58 provides that the Governors, in their discretion, shall make rules for securing that no records or information relating to the intelligence service dealing with terrorism are to be disclosed to anyone other than such persons within the Provincial Police Forces as the Inspector-Generals or the Commissioners of Police may direct, or such other public officers outside those Forces as the Governors themselves may direct.

Chief Commissioners' Provinces

In addition to the Governors' Provinces there are to be the following Chief Commissioners' Provinces—

1. British Baluchistan.
2. Delhi.

3. Ajmer-Merwara.
4. Coorg.
5. The Andaman and Nicobar Islands.
6. The area known as Panth Piploda.
7. Such other Chief Commissioners' Provinces as may be created under the Act.

A Chief Commissioner's Province is to be administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion.

Special provisions are to apply to the administration of British Baluchistan. The executive authority of the Federation extends to British Baluchistan as it extends to other Chief Commissioners' Provinces, but no Act of the Federal Legislature is to apply to it unless the Governor-General, in his discretion, by public notification so directs; and the Governor-General, in giving such a direction with respect to any Act, may direct that it is to have effect subject to such exceptions or modifications as he thinks fit. Under section 95 (3) the Governor-General may, in his discretion, make Regulations for the peace and good government of this district. Regulations so made may repeal or amend any Act of the Federal Legislature applicable to British Baluchistan and, when promulgated, are to have the same force and effect as an Act of the Federal Legislature. A similar power of ruling by regulations is given to the Governor-General in relation to the Andaman and Nicobar Islands.

The Colony of Aden

Section 288 of the Act provides that Aden is to cease to be part of India on such date as His Majesty may by Order in Council appoint.

The Aden Colony Order 1936 (S.R. & O., 1936, No. 1031), appointed 1st April 1937 as the date of cession. Pursuant to the terms of this Order, the former Chief Commissioner's Province of Aden, is now known as the Colony of Aden and its administration is carried on under the supervision of the Colonial Office.

Immunity from Proceedings

Section 306 confers upon the Governor-General, the Governors and the Secretary of State a certain legal immunity. No proceedings whatsoever are to lie in, and no process is to issue from, any court in India against these officers of State, whether in a personal capacity or otherwise, in respect of anything done or omitted to be done by them in the performance or purported performance of their duties. After retirement this immunity from legal proceedings in Indian Courts is to continue. Since, however, there may be extreme cases in which it would be desirable to remove this protection, the section goes on to provide that actions may be started against these officers after retirement if the sanction of His Majesty in Council has been previously obtained. This section, of course, does not restrict the right of any person to bring against the Federation, a Province or the Secretary of State such proceedings as are mentioned in Chapter III of Part VII of the Act, which deals with property, contracts and suits.

It should be noticed that this section only applies to proceedings in Indian Courts. At common law the Governor of any territories of the Crown is liable to an action for damages both in the courts of those territories and in the Court of King's Bench in England for acts done

in his private and unofficial capacity. In Hill *v.* Brigg (1841, 3 Moo. P.C.C. 465), it was held that a colonial court could try an action of debt to which the Governor was a party. In Mostyn *v.* Fabrigas (1774, 20 State Tr. 81) a petition of an alleged mutinous character was presented to the Governor of Minorca by one Fabrigas, who was later imprisoned. It was held that the Court of King's Bench in England could entertain an action for false imprisonment against the Governor. In Musgrove *v.* Pulido (1879, 5 App. Cas. 111) it was decided that a Governor could be sued in England for acts done in his official capacity, but outside the limits of his authority. Hence it follows that section 306 only derogates from the common law rule in so far as it restricts the right to bring proceedings in Indian Courts.

The Government of India Act 1915 dealt with certain criminal offences committed by any person holding office under the Crown in India; for example, under section 124 of that Act any servant of the Crown who, within his jurisdiction or in the exercise of his authority, oppressed any British subject was guilty of a misdemeanour. This Act has been repealed and the new constitution Act does not contain provisions of a similar nature. In these circumstances, it follows that Governors and other servants of the Crown in India must be tried in the Court of King's Bench in England for misconduct under the joint operation of the Governors Act 1699 (11 & 12 Will. III, c. 12) and the Criminal Jurisdiction Act 1802 (42 Geo. III, c. 85). The Governors Act 1699 provides that Governors may be tried "for acts of oppression within the area of their command, or for any other crime or offence contrary to the laws of the realm or in force within their

respective governments or commands". The Act of 1802 extended the Governors Act to all servants of the Crown.

In 1802 Governor Wall was tried at the Old Bailey, convicted, sentenced and executed for causing the death of one Benjamin Armstrong by the infliction of excessive corporal punishment. In R. *v.* Eyre (L.R. 3 Q.B. 487) it was held that where a colonial governor has been found guilty of crime in his official capacity the Court of King's Bench, either upon information by the Attorney-General or indictment found by the grand jury, may try such crime, and such crime may be said to have been committed in Middlesex.

II. THE PROVINCIAL LEGISLATURES

In every Province there is a Provincial Legislature which consists of His Majesty, represented by the Governor, and—

(*a*) in the Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam, two Chambers;

(*b*) in other Provinces, one Chamber.

In bicameral Provinces, the Chambers are known respectively as the Legislative Council and the Legislative Assembly; and in unicameral Provinces, the Chamber is known as the Legislative Assembly.

Representation in the Legislative Assemblies is based mainly on the allocation of seats to various communities and to specified interests. There are separate electorates for the Muhammadan, Sikh, Indian Christian,

Anglo-Indian and European communities. A table of the distribution of seats is set out in the Appendix.

The Communal Award

The details of the distribution are based upon the Communal Award issued by His Majesty's Government on 4th August 1932, with such modifications as have been rendered necessary, first, by the later proposal to create a new Province of Orissa—now carried into effect by the Act—and, secondly, by the so-called Poona Pact of 25th September 1932. The making of the Communal Award was necessitated by the failure of the various communities to reach any agreement as to the composition of the proposed Provincial Legislatures, principally because of a radical divergence of opinion on the vital question of separate electorates and the distribution of communal seats. When this Award was published His Majesty's Government announced their determination not to entertain any suggestions for its alteration or modification which were not supported by all parties affected, but if any of the communities mutually agreed upon a practical alternative scheme, they would be prepared to recommend to Parliament that that alternative should be substituted for the corresponding provision in the Award.

The Poona Pact

In the Award special arrangements were made to secure representation for the Depressed Classes. These were criticised by Mr Gandhi as introducing an artificial division between two parts of the Hindu community. Thereupon negotiations were initiated between representatives of the caste Hindus and of the Depressed

Classes, and an agreement resulted which was embodied in the Poona Pact. This agreement, in the view of His Majesty's Government, was within the terms of the announcement made by them, and therefore properly to be included as an integral part of the Communal Award.

The substance of the Poona Pact is embodied in the Act. A number of seats out of the seats classified as general seats are reserved to the Depressed Classes. This in effect means that these seats are reserved out of Hindu seats, since Hindus form the bulk of the general electorates.

These reserved seats, however, are filled by an unusual form of double election. All members of the Depressed Classes who are registered on the general electoral roll of certain constituencies elect a panel of four candidates belonging to their own body, and the four persons who receive the highest number of votes in this primary election are the only candidates for election to the reserved seat; but the candidate finally elected to the reserved seat is elected by the general electorate, that is to say, by caste Hindus and by members of the Depressed Classes alike.

The Communal Award did not contain proposals for the composition of the Legislative Council of any Province. The composition of these Councils is, however, based upon the same principles as the Communal Award; but, since the Legislative Councils are much smaller bodies than the Legislative Assemblies and it has been impossible, therefore, to provide in them for the exact equivalent of all the interests represented in the Legislative Assemblies, the Act makes provision for the inclusion of a certain number of seats to be filled by nomination

by the Governor at his discretion and accordingly available for the purpose of redressing any possible inequality or to secure some representation to women.

Election of Legislators

Legislative Assemblies, unless sooner dissolved, continue for five years from the date appointed for their first meeting and no longer. Legislative Councils are permanent bodies not subject to dissolution, but, as near as may be, one-third of their members retire in every third year.

Membership of both the Federal Legislature and a Provincial Legislature is prohibited by section 68 (2). If a person is chosen a member of both Legislatures, then, at the expiration of such period as may be specified in rules made by the Governor of the Province, that person's seat in the Provincial Legislature is to become vacant, unless he has previously resigned his seat in the Federal Legislature.

With respect to other matters such as the appointment of a Speaker and, in bicameral Provinces, of a President, voting, disqualifications for membership, privileges, legislative and financial procedure, the provisions of the Act relating to the Provinces are practically identical with those which provide for the same matters in the Federal Legislature.

It will be observed that a Bill which has been passed by the Provincial Legislative Assembly, or, in the case of a Province having a Legislative Council, has been passed by both Chambers of the Provincial Legislature, is to be presented to the Governor, who is empowered in his discretion to declare either that he assents in His Majesty's name to the Bill, or that he withholds assent,

or that he reserves the Bill for the consideration of the Governor-General. When a Bill is so reserved for the consideration of the Governor-General, he may either assent in His Majesty's name to the Bill, or withhold assent, or himself reserve the Bill for the signification of His Majesty's pleasure.

Under section 77, even when an Act has received the assent of the Governor or the Governor-General, it may be disallowed by His Majesty within twelve months from the date of such assent; and where any Act is so disallowed the Governor is to make the fact known by public notification. The Marquess of Zetland pointed out in the House of Lords on 3rd July 1935, that this power to disallow Acts did not mean that an Act was not to come into force until the expiration of the twelve months within which the veto could be used.

Provincial Estimates

The Provincial annual financial statements are to show separately—

(*a*) the sums required to meet expenditure charged upon the revenues of the Province; and

(*b*) the sums required to meet other expenditure proposed to be made from the revenues of the Province.

Section 78 (3) provides that the following expenditure is to be charged upon the revenues of the Province—

(*a*) the salary and allowances of the Governor and other expenditure relating to his office for which provision is required to be made by Order in Council;

(*b*) debt charges for which the Province is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(*c*) the salaries and allowances of ministers, and of the Advocate-General;

(*d*) expenditure in respect of the salaries and allowances of judges of any High Court;

(*e*) expenditure connected with the administration of any areas which are for the time being excluded areas;

(*f*) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(*g*) any other expenditure declared by the Act or any Act of the Provincial Legislature to be so charged.

It will be observed that this list corresponds broadly with the list setting out the Heads of Expenditure which are to be charged on the Federal revenues. The variations are due to differentiation of functions; for example, in the Provinces no provision is made for expenditure in connection with either the reserved departments or the discharge of the functions of the Crown in its relations with Indian States, since the performance of both these functions is a matter for the Governor-General.

The estimates of expenditure charged upon the revenues of a Province are not to be submitted to the vote of the Legislative Assembly. Such estimates, other than those relating to the salary and allowances of the Governor and the expenditure relating to his office, can, however, be discussed.

Each Governor has a power, similar to that of the Governor-General, to include in the schedule of authorised expenditure a sum necessary to secure the due discharge of his special responsibilities. This power is only to be exercised after a demand has been made and the Legislature has either refused it or has assented subject to reduction.

Section 83 makes provision for securing the continuance of Government grants-in-aid for the education of the Anglo-Indian and European communities. If in the last complete financial year before the establishment of Provincial Autonomy, a grant for the benefit of these two communities or either of them was included in the grants made in any Province for education, such grants are to continue unless the Provincial Legislative Assembly resolves otherwise by a majority which includes at least three-fourths of the members of the Assembly. The amounts of the grants are not to be less in amount than the average of the grants made in the ten financial years ending on 31st March 1933. Under a proviso to section 83, provision is made for a proportional reduction in these grants when the total education grant for the Province is below the average for the same ten years.

Rules of Procedure

All proceedings in the Legislature of a Province are to be conducted in the English language. Members who are unacquainted, or not sufficiently acquainted, with English may use another language.

Each Provincial Legislature has a wide power to make rules for regulating its procedure and the conduct of its business. A Governor is, however, empowered at

his discretion, after consultation with the presiding officer of the Legislature, to make rules—

(*a*) for regulating the procedure and the conduct of business in relation to matters arising out of, or affecting, any of his special responsibilities;

(*b*) for securing the timely completion of financial business;

(*c*) for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State unless the Governor, in his discretion, is satisfied that the matter affects the interests of the Provincial Government or of a British subject who is ordinarily resident in the Province, and has given his consent to the matter being discussed, or to the question being asked;

(*d*) for prohibiting, save with the consent of the Governor in his discretion—

(i) the discussion of or the asking of questions on any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince; or

(ii) the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, any matters connected with the tribal areas or arising out of or affecting the administration of an excluded area; or

(iii) the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State or of a member of its ruling family.

Any rules made by a Governor for these purposes are to prevail over any rule made by a Legislature in his

Province which may conflict or be inconsistent with them.

First Ministries under the Act

The first elections for the Legislative Assemblies and Councils under the new Act were held in January and February 1937. The Congress Party obtained majorities in six of the Provinces, namely Madras, Bombay, the United Provinces, the Central Provinces, Bihar and Orissa.

On 18th March 1937 the All-India Congress Committee, meeting at Delhi, passed a resolution favouring conditional acceptance of office. The condition laid down was that the leader of the Congress Party in a legislature should be satisfied, and able to state so publicly, that the Governor would not use his special powers of interference or set aside the advice of Ministers in regard to their "constitutional activities".

Inasmuch as such an assurance could not be given consistently with the provisions of the Act, office was for the time being refused. Consequently interim ministries representing the minority parties in the six provinces were formed.

Following the Governor-General's message to India on 21st June 1937, the Working Committee of Congress met on 7th July 1937 and passed a resolution permitting acceptance of office in the new Legislatures for the specific purpose of furthering the policy of their party. Thereupon Congress Ministries were formed in the six provinces to replace the interim Ministries. In September 1937 a seventh Congress Ministry was formed in the North-West Frontier Province.

CHAPTER VI

THE FRANCHISE

RULES made under the joint operation of the Government of India Act 1915, and the Government of India Act 1919, provided for an electorate of approximately 7,300,000 men and women, or about 3 per cent of the population of British India. Since this franchise was in the main based on a property qualification and few Hindu women are property owners in their own right, the number of women thus admitted to the franchise was very small and did not, the Joint Select Committee reported, exceed 315,000.

The Statutory Commission were of opinion that the then existing franchise was too limited, and recommended that it should be extended so as to enfranchise about 10 per cent of the total population. The advisability of increasing the ratio of women to men voters was specially emphasised.

In 1932, between the Second and Third Sessions of the Round Table Conference, a Franchise Committee was appointed by His Majesty's Government for the purpose of examining the whole subject, with a view to an increase of the electorate to a figure not less than the 10 per cent of the population suggested by the Statutory Commission nor more than the 25 per cent suggested at the First Session of the Round Table Conference. The report of this Committee was substantially approved and adopted both in the White Paper and in the

Report of the Joint Select Committee and has been embodied in the Act.

At the time of the passing of the Act, details of the franchise in respect of the Federal Council of State had not been decided. They are to be prescribed at a later date by Order in Council. On 10th July 1935, the Marquess of Zetland stated in the House of Lords that the Government contemplated the formation of constituencies similar to those which existed under the old constitution for the return of members to the then Council of State. A high property qualification would be the basis of this franchise, but the electorate would be four or five times larger than that for the old Council of State. The basis of the franchise for the Provincial Legislatures is mainly a property qualification, that is to say, payment of land revenue, agricultural tenancy of various kinds, assessment to income tax, and in towns, payment of rent. To this are added an educational qualification and certain special qualifications designed to secure an adequate representation of women and the enfranchisement of approximately 10 per cent of the Depressed Classes. The Act provides also for the enfranchisement of retired, pensioned and discharged officers, non-commissioned officers and men of His Majesty's Regular Forces, and the creation of special electorates for the seats reserved for special interests, such as labour, landlords and commerce. The individual qualifications vary according to the circumstances of the different Provinces: but the general effect of the proposals is to enfranchise approximately the same classes and categories of the population in all Provinces.

The provisions relating to the franchise are set out

in the Sixth Schedule to the Act, and are divided into two groups. The first contains the general provisions applicable to the whole of British India; the second sets out the arrangements for the individual Provinces.

General Provisions

The general provisions are based upon direct election by territorial constituencies in the case of the various communities, special arrangements being made for election in the case of the constituencies which represent special interests. The Act does not contain details of the nature of the constituencies which are to return women, of the allocation as between trade union and special labour constituencies of the seats allocated to labour, and of the qualifications to be prescribed in the case of certain of the constituencies representing commerce, industry and landholders. At the time of the passing of the Act, these matters were still under investigation in India.

Under section 291 of and the fifth and sixth schedules to the Act, however, His Majesty in Council is empowered to make provision with respect to the regulation of the franchise for the Provincial Legislative Assemblies and Councils. Pursuant to these provisions the Government of India (Provincial Legislative Assemblies) Order, 1936 (S.R. & O., 1936, No. 415), and the Government of India (Provincial Legislative Councils) Order, 1936 (S.R. & O., 1936, No. 416), were made whereby the outstanding details of the provincial franchise were regulated.

For the purpose of elections to Legislative Assemblies, each Province is divided into territorial constituencies. From these constituencies persons are chosen to fill—

(i) the general seats;
(ii) the Sikh seats, if any;
(iii) the Muhammadan seats;
(iv) the Anglo-Indian seats, if any;
(v) the European seats, if any; and
(vi) except in the case of Bihar, the Indian-Christian seats, if any.

In the case of each class of constituency the total number of seats available is distributed between the constituencies by the assignment of one or more of the seats to each constituency.

Territorial constituencies are also the basis of elections to the Legislative Councils. Each Province is divided into territorial constituencies for the purpose of electing persons to fill—

(i) the general seats;
(ii) the Muhammadan seats;
(iii) the European seats;
(iv) the Indian-Christian seats, if any.

The system of distributing seats among these classes of constituencies is similar to that for the Legislative Assemblies.

For every territorial constituency, there is an electoral roll, and every person who is, for the time being, included in the electoral roll for any such constituency is entitled to vote in that constituency. No person is to be included in the electoral roll for any territorial constituency unless he has attained the age of twenty-one years and is either—

(i) a British subject; or
(ii) the Ruler or a subject of a Federated State; or

(iii) if and so far as it is so prescribed with respect to any Province, and subject to any prescribed conditions, the Ruler or a subject of any other Indian State.

"Prescribed" means prescribed by His Majesty in Council or, so far as regards any matter which under the Act the Provincial Legislature or the Governor are competent to regulate, prescribed by an Act of that Legislature.

No person is to be included in the electoral roll for a Sikh constituency, a Muhammadan constituency, an Anglo-Indian constituency, a European constituency or an Indian-Christian constituency unless he is a Sikh, a Muhammadan, an Anglo-Indian, a European or an Indian-Christian as the case may be. Inclusion in the electoral roll for any of the above constituencies results in exclusion from the electoral roll for a general constituency in the Province. Paragraph 7 of the Sixth Schedule provides that no person is, in any Province, to vote at a general election in more than one territorial constituency. A proviso adds that in any Province in which territorial constituencies have been specially formed for the purpose of electing women members, nothing in Paragraph 7 is to prevent a person from being included in the electoral roll for, and voting at a general election in, one territorial constituency so formed and also one territorial constituency not so formed.

Requirements as to Residence

With respect to other matters material to qualifications, there are different provisions for each Province. The extent of these differences is illustrated by the varying provisions as to residence.

MADRAS.—In Madras, for example, no person is to be qualified to be included in the electoral roll for a territorial constituency unless he has resided in a house in the constituency for a period of not less than 120 days in the previous financial year. A person is deemed, for the purposes of the franchise in Madras, to reside in a house if he sometimes uses it as a sleeping-place; and a person is not deemed to cease to reside in a house merely because he is absent from it or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning.

BOMBAY.—In Bombay a person is deemed to satisfy the requirements as to residence—

(*a*) in relation to a Bombay city constituency, if he has for a period of not less than 180 days in the previous financial year resided in a house in the city of Bombay or in the Thana mahal or the South Salsette taluka;

(*b*) in relation to any other urban constituency, if he has for a period of not less than 180 days in the previous financial year resided in a house in the constituency or within two miles of its boundary;

(*c*) in the case of a rural constituency, if he has for a period of not less than 180 days in the previous financial year resided in a house in the constituency or in a contiguous constituency of the same communal description.

BENGAL.—In Bengal the residential requirements differ from both those of Madras and Bombay. No one is qualified to be included in the electoral roll for any territorial constituency in Bengal unless he has a place

of residence in that constituency. In the case of a Calcutta constituency, the residential requirements are satisfied if the elector has a place of residence in Calcutta and a place of business within the constituency. In the case of a European constituency, a person may be included on the electoral roll if he is actually employed anywhere in Bengal but is absent from Bengal on leave.

Women and the Franchise

The drafting of the provisions of the Act relating to women's franchise was a matter of some difficulty. Under the joint operation of the Government of India Act 1915, and the Government of India Act 1919, as already indicated, some 315,000 women were admitted to the franchise. The effect of such admittance was to establish a ratio of women to men electors for the Provincial Legislatures of approximately 1 : 20. The Statutory Commission commented on the necessity for improving the status and extending the influence of the women of India. "The women's movement in India", the Commission observed, "holds the key of progress, and the results it may achieve are incalculably great. It is not too much to say that India cannot reach the position to which it aspires in the world until its women play their due part as educated citizens."

The provisions of the Act relating to women's franchise have done much to further the realisation of those aspirations. Under the Act, the franchise has been extended to all women—

(1) who possess a property qualification in their own right;

(2) who are the wives or widows of men with property qualifications;

(3) who are the wives of men with a military service qualification for the vote;

(4) who are the pensioned widows and mothers of Indian officers, non-commissioned officers and soldiers or members of the Regular forces or of any British India police force;

(5) who have an educational qualification.

In general, women qualified to vote, otherwise than in respect of a property qualification in their own right, are required to make an application to be placed on the electoral roll. This "application" requirement, however, is to be dispensed with in the case of women qualified in respect of a husband's property in Bengal, Bihar, Orissa, the Central Provinces and in urban areas in the United Provinces.

It was estimated that these provisions would create a male electorate of between 28,000,000 and 29,000,000, and a female electorate of over 6,000,000. The corresponding figures under the Government of India Acts 1915–1919 were 7,000,000 and 315,000; that is to say, 14 per cent of the total population of India would be enfranchised as compared with the 3 per cent under the old constitution.

Of the scheme in its broadest aspect, the Joint Select Committee were able to report: "We are satisfied on the information before us that the proposals taken as a whole are calculated to produce an electorate representative of the general mass of the population and one which will not deprive any important section of the community of the means of giving expression to its

opinions and desires. The proposals will in the case of most Provinces redress the balance between town and country, which is at the present time too heavily weighted in favour of urban areas; they will secure a representation for women, for the Depressed Classes, for industrial labour and for special interests; and they will enfranchise the great bulk of the small landholders, of the small cultivators, of the urban ratepayers, as well as a substantial section of the poorer classes."

First Elections under the Act

In January and February 1937 the first elections under the Act were held. From the Command Paper (Cmd. 5589) presented to Parliament in November 1937 by the Secretary of State for India, it appears that the total electorate for the Provincial Legislative Assemblies was 30,137,914, and that there were 28,424,342 voters in the contested constituencies of whom 54·55 per cent polled. For the Provincial Legislative Councils there was a total electorate of 89,571; for the contested seats there were 70,240 voters of whom 71·20 per cent polled.

CHAPTER VII

DISTRIBUTION OF LEGISLATIVE POWERS

I. *Separation of Powers*
II. *The Legislative Lists*
III. *Governor-General's Ordinances*
IV. *Failure of Constitutional Machinery*
V. *Prevention of Discrimination*

I. SEPARATION OF POWERS

THE establishment of Provincial Autonomy and of a Federation necessarily results in a distribution of legislative powers between the Centre and the constituent units. Under the Act the following have legislative powers—

(i) the Federal Legislature;
(ii) the Provincial Legislatures;
(iii) the Governor-General; and
(iv) the Provincial Governors.

In the constitutions of Canada and Australia, the problem of the distribution of legislative powers has been partially solved by conferring upon one part of the Federation power to legislate on certain specified topics and reserving to the other the residual power of legislation. Thus, under the provisions of the British North America Act 1867, which established a Federal Government for Canada, the legislative activities of the

Provinces are strictly defined, the residuary legislative power being vested in the Dominion Government. In Australia, the States enjoy the residuary power, while the Commonwealth Parliament has power to make laws with respect to thirty-nine enumerated subjects.

Experience has shown that such a distribution of powers tends to promote litigation on the question whether legislation on a particular subject falls within the competence of one legislature or the other. An illustration of the results attendant upon such litigation is provided by the case of the Toronto Electric Commissioners *v.* Snider (1925, A.C. 396). Under the British North America Act 1867, section 92 (13), the Provincial Legislatures were given the exclusive right of legislating on matters affecting property and civil rights in the Provinces. The Dominion Parliament passed an Act, the Industrial Disputes Investigation Act 1907, which provided that upon a dispute occurring between employers and employees in certain large industries, the Minister for Labour for the Dominion might appoint a Board of Investigation and Conciliation. The Board was to make investigations, with power to summon witnesses and inspect documents and premises, and was to try to bring about a settlement; if no settlement resulted, they were to make a report with recommendations as to fair terms, but the report was not to be binding upon the parties. After reference to a Board, a lock-out or strike was to be unlawful. The measure had proved of great value and worked well. After some years it was challenged and the Judicial Committee of the Privy Council had to decide, having regard to the provisions of the British North America Act, that it was not within the competence of the Dominion Parliament.

Experience of Canada and Australia

Experience of the working of the Canadian and Australian constitutions has shown that there are certain matters which cannot be allocated exclusively either to a Central or to a Provincial Legislature, and for which, though it is often desirable that the Provincial Legislature should make provision, it is equally necessary that the Central Legislature should also have a legislative jurisdiction, to enable it in some cases to secure uniformity in the main principles of law throughout the country, in others to guide and encourage provincial effort, and in others, again, to provide remedies for mischiefs arising in the provincial sphere but extending or liable to extend beyond the boundaries of a single Province. Instances of the first are provided by the subject matter of the Indian Codes, of the second by such matters as labour legislation, and of the third by legislation for the prevention and control of epidemic disease. In drafting the Act, it was necessary to guard against the uniformity of law which the Indian Codes provided being destroyed or whittled away by the unco-ordinated action of Provincial Legislatures. On the other hand, it was equally necessary to recognise that local conditions vary from Province to Province, and that Provincial Legislatures ought to have the power of adapting general legislation to meet the particular circumstances of a Province.

II. THE LEGISLATIVE LISTS

The dissipation of these various difficulties has been secured by the enumeration in two lists of the subjects

in relation to which the Federation and the Provinces respectively are to have exclusive legislative jurisdiction; and the enumeration in a third list of the subjects in relation to which the Federal and each Provincial Legislature are to possess concurrent legislative powers—the powers of a Provincial Legislature in relation to the subjects in this list extending, of course, only to the territory of the Province. Details of the legislative lists are contained in the Seventh Schedule to the Act and are set out in the Appendix. List I enumerates the exclusive Federal legislative subjects; List II, the exclusive Provincial legislative subjects; and List III, the subjects upon which both the Federal Legislature and each Provincial Legislature are competent to legislate.

The statutory allocation of ecxlusive powers is in sharp contrast with the legislative relations between the Provinces and the Centre established under the old constitution. Under that constitution the Central Legislature had the legal power to legislate on any subject, even though it was classified by rules under the Government of India Acts 1915–1919 as a Provincial subject, and a Provincial Legislature could similarly legislate for its own territory on any subject, even though it was classified as a Central subject; for the Act of each Indian Legislature, Central or Provincial, required the assent of the Governor-General, and, that assent having been given, the Government of India Act 1915, section 84, together with the Government of India Act 1919, section 16 (2), provided that "the validity of any Act of the Indian Legislature or any local Legislature shall not be open to question in any legal proceedings on the ground that the Act affects a Provincial subject or a Central subject as the case may be".

Possibility of Conflict

Under the new constitution, an enactment regulating a matter included in the Federal List is only to be valid if passed by the Federal Legislature, and an enactment regulating a matter in the Provincial List is only to be valid if it is passed by a Provincial Legislature; and to the extent to which either Legislature invades the list of the other, its enactment will be *ultra vires* and void. It follows that it will be for the Courts to determine whether or not in a given enactment the Legislature has transgressed the boundaries set for it by the appropriate list.

The possibility of conflict between Federal and Provincial legislation with respect to the subjects set out in the concurrent legislative list presented difficult problems. While it was necessary for the Centre to possess in respect of the subjects included in the List a power of co-ordinating or unifying regulation, the subjects themselves are essentially provincial in character, and will be administered by the Provinces and mainly in accordance with Provincial policy. At the same time, it was clear that, if the concurrent legislative power of the Centre was to be effective in such circumstances, the normal rule would have to be that, in case of conflict between a Federal and Provincial Act in the concurrent field, the former was to prevail. The danger was, however, that an unqualified provision to that effect would enable an active Federal Legislature to oust Provincial jurisdiction entirely from the concurrent field. The device adopted to overcome these difficulties is contained in section 107, which provides as follows—

107.—(1) If any provision of a Provincial law is

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repugnant to any provision of a Federal law which the Federal Legislature is competent to enact, or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Federal law, whether passed before or after the Provincial law, or, as the case may be, the existing Indian law, shall prevail, and the Provincial law shall, to the extent of the repugnancy, be void.

(2) Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the Provincial law, having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure, has received the assent of the Governor-General or of His Majesty, the Provincial law shall in that Province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with respect to the same matter:

Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved, has received the assent of the Governor-General or of His Majesty shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3) If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall prevail, and the law of the State shall, to the extent of the repugnancy, be void.

Consultation with Provincial Governments

The Joint Select Committee perceived that, although the existence of this statutory rule would settle the validity of laws, it would not necessarily result in harmonious relations between the Centre and the Provinces. "We recognise", reported the Joint Select Committee, "that, in practice, it will be impossible for the Centre to utilise its powers in the concurrent field without satisfying itself in advance that the Governments to whose territories a projected measure will apply are, in fact, satisfied with its provisions and are prepared, in cases where it will throw extra burdens upon Provincial resources, to recommend to their own Legislatures the provision of the necessary supply; but we consider that the practical relationships which are to develop between Centre and Provinces in this limited field must be left to work themselves out by constitutional usage and the influence of public opinion, and that no useful purpose would be served by attempting to prescribe them by means of rigid legal sanctions and prohibitions. Nevertheless, we regard it as essential to satisfactory relations between Centre and Provinces in this field that the Federal Government, before initiating legislation of the kind which we are discussing, should ascertain provincial opinion by calling into conference with themselves representatives of the Governments concerned. At the same time we recommend that, although no statutory limitations should be imposed upon the exercise by the Centre of its legislative powers in the concurrent field, the Governor-General should be given guidance in his Instrument of Instructions as to the manner in which he is to exercise the discretion

which is to be vested in him in relation to matters arising in the concurrent field."

Pursuant to this suggestion the draft Instrument of Instructions to the Governor-General states that before granting his previous sanction to the introduction into the Federal Legislature of any Bill or amendment wherein it is proposed to authorise the Federal Government to give directions to a Province as to the carrying into execution in that Province of any Act of the Federal Legislature relating to a matter specified in Part II of the Concurrent Legislative List, the Governor-General should take care to see that the Governments of the Provinces which would be affected by any such measure have been duly consulted upon the proposal, and upon any other proposals which may be contained in any such measure for the imposition of expenditure upon the revenues of the Provinces.

Residual Power of Legislation

The three legislative Lists cover a wide field, and it is difficult to conceive of a topic for which provision is not made. It was perceived, however, first, that it was not possible to make the Lists exhaustive, and secondly, that future developments in Indian and World affairs might introduce subjects, not contemplated at the time of the passing of the Act, which required legislative regulation. It was clear that the Act would have to contain provisions with respect to the residual power of legislation, small though it might be. Such provisions are contained in section 104, which enacts as follows—

104.—(1) The Governor-General may by public notification empower either the Federal Legislature

or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list, and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

(2) In the discharge of his functions under this section the Governor-General shall act in his discretion.

It will be observed that this section necessarily empowers the Governor-General not merely to allocate an unenumerated subject, but also, in so doing, to determine conclusively that a given legislative project is not, in fact, covered by the enumeration as it stands,—a question which might well be open to argument. The Report of the Joint Select Committee suggested that in such circumstances the Governor-General should seek an advisory opinion from the Federal Court.

A State of Emergency

It was perceived that it might be advisable for the Federal Legislature to possess a reserve of legislative power in a time of crisis. Accordingly, section 102 provides that, if the Governor-General has in his discretion declared by Proclamation that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, the Federal Legislature is to have power to make laws for a Province with respect to any of the matters enumerated in the Provincial Legislative List. A proviso adds that no

Bill or amendment for these purposes is to be introduced or moved without the previous sanction of the Governor-General. Before giving his sanction, the Governor-General should satisfy himself that the provision proposed is a proper provision in view of the nature of the emergency.

A Provincial Legislature may continue to exercise its legislative functions despite the proclamation of a state of emergency. If, however, any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature has power to make during the continuance of the emergency, the Federal law, whether passed before or after the Provincial law, is to prevail, and the Provincial law to the extent of the repugnancy, but so long only as the Federal law continues to have effect, is to be void.

A Proclamation of Emergency—

(*a*) may be revoked by a subsequent Proclamation;

(*b*) is to be communicated forthwith to the Secretary of State and laid by him before each House of Parliament; and

(*c*) is to cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by Resolution of both Houses of Parliament.

A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make is to cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of that period.

Restriction of Legislative Powers

The Act places a number of restrictions upon the exercise of legislative powers both by the Federal Legislature and by the Provincial Legislatures. These restrictions are set out in section 108, which provides as follows—

108.—(1) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature, any Bill or amendment which—

(*a*) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India; or

(*b*) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any ordinance promulgated in his discretion by the Governor-General or a Governor; or

(*c*) affects matters as respects which the Governor-General is, by or under this Act, required to act in his discretion; or

(*d*) repeals, amends or affects any Act relating to any police force; or

(*e*) affects the procedure for criminal proceedings in which European British subjects are concerned; or

(*f*) subjects persons not resident in British India to greater taxation than persons resident in British India or subjects companies not wholly controlled and managed in British India to

greater taxation than companies wholly controlled and managed therein; or

(*g*) affects the grant of relief from any Federal tax on income in respect of income taxed or taxable in the United Kingdom.

(2) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, a Chamber of a Provincial Legislature any Bill or amendment which—

(*a*) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India; or

(*b*) repeals, amends or is repugnant to any Governor-General's Act, or any ordinance promulgated in his discretion by the Governor-General; or

(*c*) affects matters as respects which the Governor-General is by or under this Act required to act in his discretion; or

(*d*) affects the procedure for criminal proceedings in which European British subjects are concerned;

and unless the Governor of the Province in his discretion thinks fit to give his previous sanction, there shall not be introduced or moved any Bill or amendment which—

(i) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor; or

(ii) repeals, amends or affects any Act relating to any police force.

(3) Nothing in this section affects the operation of any other provision in this Act which requires the previous sanction of the Governor-General or of a Governor to the introduction of any Bill or the moving of any amendment.

Bills requiring Prior Sanction

Illustrations of provisions which require the previous sanction of the Governor-General or of a Governor to the introduction of any Bill or the moving of any amendment in either the Federal Legislature or a Provincial Legislature, as the case may be, are afforded by—

(i) sections 37 and 82. These sections relate to the introduction of Bills or the moving of amendments in either the Federal Legislature or a Provincial Legislature, as the case may be, making provision for imposing or increasing any tax, or for regulating the borrowing of money and the like; and for declaring any expenditure to be expenditure charged on the revenues of the Federation;

(ii) section 126 (2). This section provides that the executive authority of the Federation is to extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Federal Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions. A Bill or amendment making provision for these purposes is not to be introduced

into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General;

(iii) section 141, which enacts that Bills in the Federal Legislature affecting taxation in which the Provinces are interested are not to be introduced without the prior sanction of the Governor-General.

Section 110 imposes further restrictions on legislative powers. It provides as follows—

110. Nothing in this Act shall be taken—

(*a*) to affect the power of Parliament to legislate for British India, or any part thereof; or

(*b*) to empower the Federal Legislature, or any Provincial Legislature—

(i) to make any law affecting the Sovereign or the Royal Family, or the Succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of India, or the law of British nationality, or the Army Act, the Air Force Act, or the Naval Discipline Act, or the law of Prize or Prize courts; or

(ii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law amending any provision of this Act, or any Order in Council made thereunder, or any rules made under this Act by the Secretary of State, or by the Governor-General or a Governor in his dis-

cretion, or in the exercise of his individual judgment; or

(iii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law derogating from any prerogative right of His Majesty to grant special leave to appeal from any court.

Position of the States

The foregoing observations have been directed solely to the legislative relations between the Federation and the Provinces. The relations between the Federation and the States in this sphere are not, and cannot be, the same. The Act provides that—

101. Nothing in this Act shall be construed as empowering the Federal Legislature to make laws for a Federated State otherwise than in accordance with the Instrument of Accession of that State and any limitations contained therein.

The Report of the Joint Select Committee pointed out that it will be competent for the States to exercise powers of legislation in relation to subjects enumerated as Federal subjects in their Instrument of Accession, with the proviso, now contained in section 107 (3) of the Act, that in the case of conflict between a State law and a Federal law on a subject accepted by the State as Federal, the latter will prevail.

III. GOVERNOR-GENERAL'S ORDINANCES

Under the provisions of section 42 if at any time when the Federal Legislature is not in session the

Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require. A proviso adds that the Governor-General—

(*a*) is to exercise his individual judgment as respects the promulgation of any ordinance under this section if a Bill containing the same provisions would, under the Act, have required his previous sanction to its introduction into the Legislature; and

(*b*) is not, without instructions from His Majesty, to promulgate any such ordinance if he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty's pleasure.

An ordinance promulgated under this section is to have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

(*a*) is to be laid before the Federal Legislature and is to cease to operate at the expiration of six weeks from the re-assembly of the Legislature, or, if before the expiration of that period resolutions disapproving it are passed by both Chambers, upon the passing of the second of those resolutions;

(*b*) may be disallowed by the Crown;

(*c*) may be withdrawn at any time by the Governor-General.

If and so far as any such ordinance makes any pro-

vision which the Federal Legislature would be incompetent to enact, it is to be void.

It will be observed that the Governor-General can only exercise his powers under section 42 when the Federal Legislature is not in session. Section 43, however, empowers the Governor-General at any time to promulgate ordinances if he is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is required to act in his discretion or to exercise his individual judgment. An ordinance promulgated under section 43 is to continue in operation for such period, not exceeding six months, as may be specified therein, but may, by a subsequent ordinance, be extended for a further period not exceeding six months. It is to have the same force and effect as an Act of the Federal Legislature but—

(*a*) may be disallowed by the Crown;

(*b*) may be withdrawn at any time by the Governor-General; and

(*c*) if it is an ordinance extending a previous ordinance for a further period, is to be communicated immediately to the Secretary of State and laid by him before each House of Parliament.

If at any time it appears to the Governor-General that for the purpose of enabling him satisfactorily to discharge his functions in so far as he is required to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to both Chambers of the Legis-

lature explain the circumstances which in his opinion render legislation essential and either—

(*a*) enact forthwith, as a Governor-General's Act, a Bill containing such provisions as he considers necessary; or

(*b*) attach to his message a draft of the Bill which he considers necessary.

Where the Governor-General attaches a draft to his message, he may at any time after the expiration of one month enact, as a Governor-General's Act, the Bill proposed by him to the Chambers either in the form of the draft communicated to them or with such amendments as he deems necessary; but before so doing he is to consider any address which may have been presented to him by either Chamber with reference to the Bill or to any suggested amendments. A Governor-General's Act is to have the same force and effect as an Act of the Federal Legislature. It may be disallowed by the Crown.

Every Governor-General's Act is to be communicated to the Secretary of State and laid by him before each House of Parliament.

IV. FAILURE OF CONSTITUTIONAL MACHINERY

The Act contains special provisions enabling the Governor-General to act promptly in the event of a breakdown of the constitutional machinery. Under section 45, if at any time the Governor-General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of the Act, he may, by Proclamation—

(a) declare that his functions shall to such extent as

may be specified in the Proclamation be exercised by him in his discretion;

(b) assume to himself all or any of the powers vested in or exercisable by any Federal body or authority.

A Proclamation for these purposes may contain such incidental and consequential provisions as may appear to the Governor-General to be necessary or desirable for giving effect to it, including provisions for suspending in whole or in part the operation of any provisions of the Constitution relating to any Federal body. The Governor-General, however, is not enabled to assume to himself any of the powers vested in or exercisable by the Federal Court or to suspend, either in whole or in part, the operation of any provision of the Act relating to that Court. One Proclamation may be revoked or varied by another.

When such a Proclamation is issued—

(*a*) it must be communicated to the Secretary of State and laid by him before each House of Parliament; and

(*b*) unless it is a Proclamation revoking a previous Proclamation, it is to cease to operate at the expiration of six months.

It is provided, however, that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation, unless revoked, is to continue in force for a further period of twelve months from the date on which it would otherwise have ceased to operate. If at any time the government of the Federation has for a continuous period of three years been carried

on under such a Proclamation, then, at the expiration of such period, the Proclamation is to cease to have effect and the government of the Federation is to be carried on in accordance with the provisions of the Act, subject to any amendment of it which Parliament may deem it necessary to make. If the Governor-General, by a Proclamation under section 45, assumes to himself any power of the Federal Legislature to make laws, any law made by him in the exercise of that power is to continue to have effect notwithstanding the revocation or expiration of the Proclamation.

It is interesting to compare these provisions with those contained in the Emergency Powers Act 1920 (10 & 11 Geo. V., c. 55) which applies to the United Kingdom, and enables the Executive to rule by regulation after a Proclamation of Emergency has been made. This power is, however, subject to a stricter because more immediate Parliamentary control.

Governors' Ordinances

All Governors have powers, similar to those possessed by the Governor-General, to promulgate ordinances during recesses of the Provincial Legislatures and, at any time, with respect to certain subjects. In addition, they are empowered to enact Acts in circumstances identical with those under which the Governor-General can exercise the same function in relation to the Federal Legislature. Section 93 provides that Governors may issue Proclamations in the event of a failure of constitutional machinery on practically the same terms as the Governor-General. The concurrence of the latter, however, must be obtained before such a Proclamation can be made by a Governor.

V. PREVENTION OF DISCRIMINATION

Under the Act the Federal Legislature will enjoy practically complete fiscal freedom, with little in the nature of settled tradition to guide its relationship in fiscal matters with the United Kingdom. In these circumstances the Report of the Joint Select Committee recommended the inclusion of provisions for facilitating the transition from the old to the new conditions.

Hence it comes about that the Governor-General is to have a special responsibility for the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment. "But, as it is important", reported the Joint Select Committee, "that the scope which we intend to be attached to the special responsibility so defined should be explained more exactly than could conveniently be expressed in statutory language, we further recommend that the Governor-General's Instrument of Instructions should give him full and clear guidance. It should be made clear that the imposition of this special responsibility upon the Governor-General is not intended to affect the competence of his Government and of the Indian Legislature to develop their own fiscal and economic policy; that they will possess complete freedom to negotiate agreements with the United Kingdom or other countries for the securing of mutual tariff concessions; and that it will be his duty to intervene in tariff policy or in the negotiation or variation of tariff agreements only if, in his opinion, the intention of the policy contemplated is to subject trade between the United Kingdom and India to restrictions conceived not in the economic interests of

India but with the object of injuring the interests of the United Kingdom."

In addition to conferring this special responsibility upon the Governor-General, the Act contains provisions for the prevention of discrimination against British trade in India. Section 111 enacts that a British subject domiciled in the United Kingdom is to be exempt from the operation of so much of any Federal or Provincial law as—

(*a*) imposes any restriction on the right of entry; or

(*b*) imposes by reference to place of birth, race, descent, language, religion, domicile, residence or duration of residence, any disability, liability, restriction or condition in regard to travel, residence, the acquisition, holding, or disposal of property, the holding of public office, or the carrying on of any occupation, trade, business or profession.

It is provided, however, that a provision, whether of the law of British India or of the law of the United Kingdom, which empowers any public authority to impose quarantine regulations, or to exclude or deport individuals, wherever domiciled, who appear to that authority to be undesirable persons, is not to be deemed a restriction on the right of entry.

There is reserved to the Governor-General and the Governors a power of suspending these provisions if such suspension is necessary for the prevention of any grave menace to the peace or tranquillity of any part of India or for the purpose of combating crimes of violence intended to overthrow the Government.

Protection of British Companies

Section 112 prohibits the passing of financial measures which discriminate against British subjects domiciled in the United Kingdom or Burma or companies incorporated there.

A law is to be deemed to discriminate against such persons or companies if it would result in any of them being liable to greater taxation than that to which they would be liable if domiciled or incorporated in British India.

Under the provisions of section 113 a company incorporated in the United Kingdom, when trading in India, is to be deemed to have complied with the provisions of any Indian law relating to the place of incorporation of companies trading in India, or to the domicile, residence or duration of residence, language, race, religion, descent or place of birth, of the directors, shareholders, or of the agents and servants of such companies. Under section 114, British subjects domiciled in the United Kingdom who are directors, shareholders, servants or agents of a company incorporated in India are to be deemed to have complied with any conditions imposed by Indian law upon companies so incorporated, relating to the same matters. It was perceived, however, that there should be reciprocity between India and the United Kingdom; and accordingly, it is provided that no company or person is to benefit from these sections if and so long as similar restrictions are imposed by or under the law of the United Kingdom in regard to companies incorporated in, and persons domiciled in, British India.

Under section 116, companies incorporated in the

United Kingdom and carrying on business in India are to be eligible for any grant, bounty or subsidy payable out of the revenues of the Federation or of a Province, for the encouragement of any trade or industry, to the same extent as companies incorporated in British India.

A distinction, however, has been drawn between companies already engaged, at the date of the Act which authorises the grant, in that branch of trade or industry which it is sought to encourage, and companies which engage in it subsequently. In the case of the latter, under section 116 (2) an Act of the Federal Legislature or of a Provincial Legislature may require that the company shall not be eligible for any grant, bounty or subsidy under the Act unless and until—

(*a*) the company is incorporated by or under the laws of British India or, if the Act so provides, is incorporated by or under the laws of British India or of a Federated State; and

(*b*) such proportion, not exceeding one half, of the members of its governing body as the Act may prescribe are British subjects domiciled in India or, if the Act so provides, are either British subjects domiciled in India or subjects of a Federated State; and

(*c*) the company gives such reasonable facilities as may be so prescribed for the training of British subjects domiciled in India or, if the Act so provides, of British subjects domiciled in India or subjects of a Federated State.

Ships registered in the United Kingdom are not to be subjected by law in British India to any discrimination whatsoever, as regards the ships, officers or crew,

or her passengers or cargo, to which ships registered in British India would not be subjected in the United Kingdom. Similar provisions are to apply in relation to aircraft.

The Report of the Joint Select Committee pointed out that, notwithstanding these provisions against discrimination, it will still be the duty of the Governor-General and of the Governors to exercise their discretion in giving or withholding their assent to Bills. "And we think", reported the Joint Select Committee, "that the Instrument of Instructions should make it plain . . . that it is the duty of the Governor-General and of the Governors, in exercising their discretion in the matter of assent to Bills, not to feel themselves bound by the terms of the statutory prohibitions in relation to discrimination, but to withhold their assent from any measure which, though not in form discriminatory, would in their judgment have a discriminatory effect. . . . We further recommend that the Instruments of Instructions of the Governor-General and the Governors should require them, if in any case they feel doubt whether a particular Bill does or does not offend against the intentions of the Constitution Act in the matter of discrimination, to reserve the Bill for the signification of His Majesty's pleasure."

The existence of these statutory prohibitions results, it is submitted, in the possibility of Federal and Provincial Acts being challenged in the Courts as being inconsistent with them and therefore *ultra vires*.

Conventions with United Kingdom

The Joint Select Committee reported that they considered that a friendly settlement by negotiation was by

far the most appropriate and satisfactory method of dealing with the question of discrimination. Effect is given to this suggestion by section 118, which provides that His Majesty, if satisfied that a Convention has been made between His Majesty's Government in the United Kingdom and the Federal Government covering the matters for which legislative provisions against discrimination have been made, and that the necessary legislation for implementing it has been passed by Parliament and by the Indian Legislature, is empowered to declare by Order in Council that the statutory provisions in the Constitution Act are not to apply so long as the Convention continues in force between the two countries.

CHAPTER VIII

THE FEDERATION AND ITS UNITS

I. *Administrative Relations*
II. *Inter-Provincial Co-operation*

I. ADMINISTRATIVE RELATIONS

THE transformation of British India from a unitary into a Federal State necessitated a complete readjustment of the relations between the Federal and Provincial Governments. Under the old constitution the Provincial Governments were subordinate to the Central Government and under a statutory obligation to obey its orders. But since under the Act the respective spheres of the Centre and of the Provinces are strictly delimited and the jurisdiction of each (except in the concurrent field) excludes the jurisdiction of the other, it was necessary to include provisions for the establishment of a new nexus between the Federation and its constituent units.

It will be remembered that the Federal Legislature has power to enact legislation in Federal subjects which will have the power of law in every Province and, subject to such reservations as may be contained in the Ruler's Instrument of Accession, in every State which is a member of the Federation. The administration and execution of these laws is to be vested in the Federation itself and in Federal officers. In the exercise of the executive authority of the Federation in any Province

or Federated State regard is to be had to the interests of that Province or State. Under section 124, however, the Governor-General may, with the consent of the Government of a Province or the Ruler of a Federated State, entrust either conditionally or unconditionally to that Government or Ruler functions in relation to any matter to which the executive authority of the Federation extends. Moreover, the Federal Legislature may delegate to the Provincial Governments and the Federated States the duty of executing and administering the law on behalf of the Federal Government.

Under section 125 agreements may be made between the Governor-General and the Ruler of a Federated State for the exercise by the Ruler of functions in relation to the administration in his State of any law of the Federal Legislature which applies to it. Any such agreements are to contain provisions enabling the Governor-General to satisfy himself, by inspection or otherwise, that the administration of the law to which the agreement relates is carried out in accordance with the policy of the Federal Government and, if he is not satisfied with such administration, he may issue directions to the Ruler.

The next section provides as follows—

> **126.—(1) The executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for that purpose.**

The executive authority of the Federation is also to extend to the giving of directions to a Province as to

the carrying into execution therein of any Act of the Federal Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions. A proviso adds that a Bill or amendment for these purposes is not to be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General. The executive authority of the Federation is also to extend to the giving of directions to a Province as to the construction and maintenance of means of communication declared in the direction to be of military importance.

Provision is made under section 126 (4) for a situation in which a Provincial Government has declined to carry out the directions which it has received from the Federal Government. The Governor-General, acting in his discretion, may then issue as orders to the Governor of that Province either the directions previously given or those directions modified in such manner as he thinks proper. Since the Governor of a Province has a special responsibility for securing the execution of orders lawfully issued by the Governor-General, the issue of such orders will impose upon the Governor the duty of acting in opposition to the policy and advice of his Ministers.

In addition, the Governor-General is empowered in his discretion to issue instructions to the Governor of a Province as to the manner in which the executive power and authority in the Province are to be exercised for the purpose of preventing any grave menace to the peace and tranquillity of India.

Section 128 provides that the authority of every Federated State is to be so exercised as not to impede

or prejudice the exercise of the executive authority of the Federation as far as it is exercisable in the State by virtue of a law of the Federal Legislature which applies to it. If it appears to the Governor-General that the Ruler of any Federated State has in any way failed to fulfil his obligations in this respect, the Governor-General, acting in his discretion, may, after considering any representations made to him by the Ruler, issue such directions to that Ruler as he thinks fit. Disputes as to whether the executive authority of the Federation is exercisable in a State may be referred, at the instance either of the Federation or of the Ruler, to the Federal Court for determination.

The Federal Government reserves control of broadcasting rights in the Provinces and Federated States, but they must not refuse unreasonably to entrust the Governments and Rulers with the power to construct and use transmitters and impose fees therefor, nor are the Federal Government to restrict the matter broadcast except in so far as such restriction may, in the opinion of the Governor-General, be necessary for the prevention of any grave menace to the peace and tranquillity of India or for the securing of the due administration of the reserved subjects.

II. INTER-PROVINCIAL CO-OPERATION

As appears from Chapter XI dealing with the Judicature, there has been established under the Act a Federal Court which is to have jurisdiction to hear disputes between Provinces involving the existence or extent of a legal right; but experience of the working of Federations, both within and without the British Empire, has

shown that inter-provincial disputes of a non-legal character sometimes arise. The Joint Select Committee considered whether it would not be desirable to provide some constitutional machinery for disposing of such differences. They expressed the opinion that every effort should be made to develop a system of inter-provincial conferences, at which administrative problems common to adjacent areas, as well as points of difference, might be discussed and adjusted.

The Joint Select Committee, however, did not consider it advisable that the constitution of an Inter-Provincial Council should be fixed in the Act itself, but recommended the inclusion of provisions which would enable such a council to be established in the future. Effect is given to this recommendation by the Act, which provides as follows—

135. If at any time it appears to His Majesty upon consideration of representations addressed to him by the Governor-General that the public interests would be served by the establishment of an Inter-Provincial Council charged with the duty of—

(*a*) inquiring into and advising upon disputes which may have arisen between Provinces;

(*b*) investigating and discussing subjects in which some or all of the Provinces, or the Federation and one or more of the Provinces, have a common interest ; or

(*c*) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for His Majesty in Council to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

An Order establishing any such Council may make provision for representatives of Indian States to participate in the work of the Council.

Water Supplies

The Joint Select Committee, however, pointed out that there was one matter with respect to which they were of opinion that specific provision ought to be made. Under the old constitution, the Government of India possessed what may be called a general right to use and control, in the public interest, the water supplies of the country as a whole, and each Province claimed a similar right over its own water supply. "Water supplies" was a Provincial subject for legislation and administration, but the Central Legislature also had power to legislate upon it "with regard to matters of inter-provincial concern or affecting the relations of a Province with any other territory". Administration of water supplies in a Province was reserved to the Governor in Council, and was therefore under the ultimate control of the Secretary of State, with whom the final decision rested when claims or disputes arose between one Provincial Government and another or one State and another, or between a Province and a State. It was clear that the control of the Secretary of State could not continue under the new constitution.

Under the Act, where a dispute arises between two

units of the Federation with respect to an alleged use by one unit of its executive or legislative powers in relation to water supplies in a manner detrimental to the interests of the other, the aggrieved unit may complain to the Governor-General. On the receipt of such a complaint, the Governor-General, unless he thinks fit summarily to reject it, is to appoint a Commission consisting of persons having special knowledge and experience in irrigation, engineering, administration, finance and law, for the purpose of investigating and reporting upon the matter. After considering any report made to him by the Commission, the Governor-General is to give such decision and make such order as he may deem proper. The right is reserved to the Government of a Province or the Ruler of a State to request the Governor-General to refer the matter to His Majesty in Council. Any Act of a Provincial Legislature or of a State which is repugnant to an order of His Majesty in Council or the Governor-General in respect of water supplies is to be void to the extent of the repugnancy.

Section 133 excludes the jurisdiction of the Federal Court and of any other Court in the case of any dispute which can be decided by the Governor-General.

These provisions are not intended to extend to a case where one unit is desirous of securing the right to make use of water supplies in the territory of another unit, but only to the case of one unit using water to the detriment of another.

CHAPTER IX

FEDERAL FINANCE

I. *The Problem*
II. *The Solution*
III. *The Reserve Bank of India*
IV. *Remissions to the States*

I. THE PROBLEM

As the Joint Select Committee observed in their Report, the problem of the allocation of resources is necessarily one of difficulty in any Federation, since two different authorities—the Government of the Federation and the Government of the Unit—each with independent powers, are raising money from the same body of taxpayers.

British India, indeed, has already had experience of a Federal system of finance. The conclusions to which it has led, according to the Joint Select Committee, are these—

(*a*) That there are a few Provinces where the available sources of revenue are never likely to be sufficient to meet any reasonable standard of expenditure.

(*b*) That the existing division of heads of revenue between Centre and Provinces leaves the Centre

with an undue share of those heads which respond most readily to an improvement in economic conditions.

In these circumstances there was a very strong claim by the Provinces for a substantial share in the taxes on income—a claim which, as might be expected, had been pressed most vigorously by the more industrialised Provinces like Bombay and Bengal.

The Joint Select Committee reported that the provincial claim to Income Tax had been given added impetus by the attitude of the States in the matter of direct taxation.

"The entry of the States into the Federation", they said, "removes, indeed, one very serious problem. The incidence of the sea-customs duties is upon the consumers in the Indian States and the consumers in British India alike; but the States have no say under the present system in the fixing of the tariff. With the continual rise for many years past in the level of the import duties, the States have pressed more and more for the allocation to them of a share in the proceeds of these duties. . . . With their entry into the Federation the States will take part in the determination of the Indian tariff, and their claim to a share in the proceeds disappears.

"But if their entry removes this major problem, it introduces another, though less formidable complication. It is obviously desirable that, so far as possible, all the Federal units should contribute to the resources of the Federation on a similar basis. Broadly speaking, no difficulty arises in the sphere of indirect taxation which constitutes some four-fifths of the central revenues; the

difficulty arises over direct taxation, that is to say, taxes on income."

It was pointed out that some of the federal expenditure would be for British India purposes only, such as subsidies to deficit British India Provinces. There had also been controversy on the question whether the service of part of the pre-Federation debt should not fall on British India alone. Further, part of the proceeds of taxes on income is derived from subjects of Indian States; *e.g.* holders of Indian Government securities and shareholders in British India companies. The States also make a contribution in kind to defence of which there is no counterpart in the Provinces of British India. It seemed to the Joint Select Committee both unnecessary and undesirable to attempt any accurate balancing of these factors or to determine on a basis of this kind what share of the income tax could equitably be retained by the Federation. The difficulty was that the Federal Centre was unlikely, at least for some time to come, to be able to spare much, if anything, by way of fresh resources for the Provinces, apart from the pressing needs of deficit areas.

Internal Customs Barriers

The Joint Select Committee also drew attention to the power which the States already possess to impose customs duties on their land frontiers.

"It is greatly to be desired", said the Committee, "that States adhering to the Federation should, like the Provinces, accept the principle of internal freedom of trade in India and that the Federal Government alone should have the power to impose tariffs and other restrictions

on trade. Many States, however, derive substantial revenues from customs duties levied at their frontiers on goods entering the State from other parts of India. These duties are usually referred to as internal customs duties, but in many of the smaller States are often more akin to octroi [a duty or tax levied on certain articles on their admission into a town] and terminal taxes than to customs. In some of the larger States the right to impose them is specifically limited by treaty.

"We recognise that it is impossible to deprive States of revenue upon which they depend for balancing their budgets and that they must be free to alter existing rates of duty to suit varying conditions. But internal customs barriers are in principle inconsistent with the freedom of interchange in a fully developed Federation, and we are strongly of the opinion that every effort should be made to substitute other forms of taxation for these internal customs. The change must, of course, be left to the discretion of the States concerned as alternative sources of revenue become available."

New Overhead Charges

The Joint Select Committee were furnished with an estimate of the new overhead charges which would result from the adoption of the constitutional changes, that is to say, the additional expenditure required by reason (*inter alia*) of an increase in the size of the Legislatures and electorates and the establishment of the Federal Court. It was estimated that these would amount to $\frac{3}{4}$ crore (£562,500) per annum, attributable to the establishment of Provincial Autonomy, and another $\frac{3}{4}$ crore attributable to the establishment of the Federation. The Joint Select Committee understood that these

would be the only fresh burdens imposed upon the taxpayers of India as a direct result of the constitutional changes.

Certain other factors, however, would affect the financial position. First in importance was the separation of Burma, as a result of which it was estimated that the revenues of India would suffer a loss estimated to be possibly as much as three crores (£2,250,000), less the yield of any revenue duties on imports from Burma which might be introduced from the date of separation. Subventions to deficit Provinces, it was pointed out, would also react on Federal finance.

The general conclusion to which the Joint Select Committee came was that, though no formidable new financial burden would be thrown on the taxpayers of India as a whole as a direct result of the constitutional changes, the necessity for giving greater elasticity to provincial resources, the subventions to the deficit Provinces, and also the separation of Burma, would impose a further strain on the finances at the Centre.

Such being, in brief, the problem of Federal finance under the new Constitution as visualised by the Joint Select Committee, it is interesting to see how it is dealt with under the statute.

II. THE SOLUTION

Allocation of Resources

Under section 137 of the Act the following duties and taxes are to be levied and collected by the Federation—

1. Duties in respect of succession to property other than agricultural land.

2. Such stamp duties as are mentioned in the Federal Legislative List, that is to say, stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.
3. Terminal taxes on goods or passengers carried by railway or air.
4. Taxes on railway fares and freights.

Federal Surcharge

But the net proceeds in any financial year of any such duty or tax, except in so far as they represent proceeds attributable to Chief Commissioners' Provinces, are not to form part of the revenues of the Federation. They are to be assigned to the Provinces and to the Federated States, if any, within which such duty or tax is leviable in that year, and be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by Act of the Federal Legislature.

Power is, however, given to the Federal Legislature at any time to increase such duties or taxes by a surcharge for Federal purposes. The whole proceeds of any such surcharge are to form part of the revenues of the Federation.

The expression "revenues of the Federation" includes all revenues and public moneys raised or received by the Federation.

Taxes on Income

Under section 138 (1) taxes on income, other than agricultural income, are to be levied and collected by the Federation.

But a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as they represent proceeds attributable to Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, is not to form part of the revenues of the Federation; it is to be assigned to the Provinces and to the Federated States, if any, within which such tax is leviable in that year, and distributed among the Provinces and those States in such manner as may be prescribed.

In this section "taxes on income" does not include a corporation tax; "prescribed" means prescribed by His Majesty in Council; "Federal emoluments" includes all emoluments and pensions payable out of the revenues of the Federation or of the Federal Railway Authority in respect of which income tax is chargeable.

There are two provisos to this subsection—

(*a*) The percentage originally prescribed is not to be increased by any subsequent Order in Council.

(*b*) The Federal Legislature may at any time increase such taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge are to form part of the revenues of the Federation.

Thus under the subsection the percentage of income-tax proceeds earmarked for Provinces and Federated States will be fixed by Order in Council. Once fixed, it cannot be increased by any subsequent Order, so as to diminish the Central resources and necessitate a Federal surcharge.

The White Paper proposed that a prescribed percentage, not being less than 50 per cent nor more than 75 per cent of the net revenues derived from taxes on income as

specified in the section should be assigned to the Governors' Provinces; and that provision should be made enabling this arrangement, with such modifications as might be found necessary, to be extended to State members of the Federation. Further, it was proposed that for each of the first three years after the commencement of the Act the Federal Government should be entitled to retain in aid of Federal revenues out of the moneys which would otherwise be assigned to the Provinces (the amount distributed to the Provinces being correspondingly reduced) a sum to be prescribed, and for each of the next seven years a sum which should be in any year less than that retained in the previous year by an amount equal to one-eighth of the sum originally prescribed. But the Governor-General was to be empowered in his discretion to suspend these reductions in whole or in part if, after consulting the Federal and Provincial Ministers, he was of opinion that their continuance for the time being would endanger the financial stability of the Federation.

The Joint Select Committee, on the other hand, saw little or no prospect of the possibility of fixing a higher percentage than 50 per cent, and they considered there was an obvious difficulty in prescribing in advance a time-table for the process of transfer, even though power was reserved to the Governor-General to suspend the process (or, as they assumed, its initiation). The facts indicated that for some time to come the Centre was unlikely to be able to do much more than find the funds necessary for the deficit Provinces; and that an early distribution of any substantial part of the taxes on income was improbable. The Committee thought it preferable to leave the actual period for the process of

transfer, which the White Paper proposed should be three and seven years, to be determined by Order in Council in the light of circumstances at the time rather than to fix them by statute.

Retention of Prescribed Sums

That in fact is how the matter is dealt with by the statute. Under section 138 (2) the Federation is empowered to retain out of the moneys assigned to Provinces and States—

(*a*) in each year of a prescribed period such sum as may be prescribed; and

(*b*) in each year of a further prescribed period a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual reduction.

But it is provided that—

(i) neither of the periods originally prescribed shall be reduced by any subsequent Order in Council;

(ii) the Governor-General in his discretion may in any year of the second prescribed period direct that the sum to be retained by the Federation in that year shall be the sum retained in the preceding year, and that the second prescribed period be correspondingly extended, but he shall not give any such direction except after consultation with such representatives of Federal, Provincial and State interests as he may think desirable, nor shall he give any such direction unless he is

satisfied that the maintenance of the financial stability of the Federal Government requires him so to do.

Where an Act of the Federal Legislature imposes a surcharge for Federal purposes, the Act is to provide for the payment by each Federated State in which taxes on income are not leviable by the Federation of a contribution to the revenues of the Federation assessed on such basis as may be prescribed.

Corporation Tax

Section 139 of the Act deals with Corporation Tax, which is included in the Federal Legislative List. In conformity with the White Paper proposal this section provides that Corporation Tax shall not be levied by the Federation in any Federated State until ten years have elapsed from the establishment of the Federation. It also reserves to any State which prefers that companies subject to the law of the State should not be directly taxed the right itself to contribute an equivalent sum to the Federal fisc. If the Ruler of a State is dissatisfied with the determination as to the amount of the contribution payable by his State in any financial year, he may appeal to the Federal Court.

"Corporation Tax" is defined as meaning "any tax on so much of the income of companies as does not represent agricultural income being a tax to which the enactments requiring or authorising companies to make deductions in respect of income tax from payments of interest or dividends, or from other payments representing a distribution of profits, have no application."

Salt Excise and Export Duties

Section 140 provides that duties on salt, Federal duties of excise and export duties are to be levied and collected by the Federation. But if an Act of the Federal Legislature so provides, there are to be paid out of the revenues of the Federation to the Provinces and to the Federated States, if any, to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds. Those sums are to be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by such Act.

It is provided, however, that one-half, or such greater proportion as His Majesty in Council may determine, of the net proceeds in each year of any export duty on jute or jute products shall not form part of the revenues of the Federation but shall be assigned to the Provinces or Federated States in which jute is grown in proportion to the respective amounts of jute grown therein.

Prior Sanction of Governor-General

Under section 141 no Bill or amendment is to be introduced or moved in either Chamber of the Federal Legislature except with the previous sanction of the Governor-General in his discretion which—

(i) imposes or varies any tax or duty in which Provinces are interested—that is to say, a tax or duty the whole or part of the net proceeds whereof are assigned to any Province; or

(ii) varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to Indian income tax; or

(iii) affects the principles on which moneys are or may be distributable to Provinces or States; or

(iv) imposes any such Federal surcharge as is mentioned in sections 137 and 138.

It is further provided that the Governor-General is not to give his sanction to the introduction of any Bill or the moving of any amendment imposing in any year any such Federal surcharge unless he is satisfied "that all practicable economies and all practicable measures for otherwise increasing the proceeds of Federal taxation or the portion thereof retainable by the Federation would not result in the balancing of Federal receipts and expenditure on revenue account in that year".

Federal and Provincial Lists

It is interesting to contrast the financial subjects included in the Federal Legislative List with those included in the Provincial Legislative List:

FEDERAL LEGISLATIVE LIST

Duties of customs, including export duties.

Duties of excise on tobacco and other goods manufactured or produced in India except—

(*a*) alcoholic liquors for human consumption;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(*c*) medicinal and toilet preparations containing alcohol or any substance included in (*b*).

Corporation tax.

Salt.

Taxes on income other than agricultural income.

Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

Duties in respect of succession to property other than agricultural land.

The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights.

PROVINCIAL LEGISLATIVE LIST

Land revenue, including the assessment and collection of revenue.

Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(*a*) alcoholic liquors for human consumption;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(*c*) medicinal and toilet preparations containing alcohol or any substance included in (*b*).

Taxes on agricultural income.

Taxes on lands and buildings, hearths and windows.

Duties in respect of succession to agricultural land.

Taxes on mineral rights subject to any limitations

imposed by any Act of the Federal Legislature relating to mineral development.

Capitation taxes.

Taxes on professions, trades, callings and employments.

Taxes on animals and boats.

Taxes on the sale of goods and on advertisements.

Cesses on the entry of goods into a local area.

Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

The rates of stamp duty in respect of documents other than those specified in the provisions of the Federal Legislative List with regard to rates of stamp duty.

Dues on passengers and goods carried on inland waterways.

Tolls.

No burden is to be imposed on the revenues of the Federation or the Provinces except for the purposes of India.

III. THE RESERVE BANK OF INDIA

The White Paper proposals relating to responsibility for the finance of the Federation were based on the assumption that before the first Federal Ministry came into being a Reserve Bank, free from political influence, would have been set up by the Indian Legislature and be already successfully operating.

For the purpose of constituting it the Indian Legislature passed The Reserve Bank of India Act 1934 (Act

No. 11 of 1934). The Bank was duly set up in accordance with the provisions of this Act. Its business is to regulate the issue of Bank-notes and the keeping of reserves with a view to securing monetary stability in British India and generally to operate the currency and credit system of the country to its advantage. The original share capital of the Bank is five crores of rupees (£3,750,000) divided into shares of one hundred rupees each. Separate registers of shareholders are to be maintained at Bombay, Calcutta, Delhi, Madras and Rangoon. The general superintendence and direction of the affairs and business of the Bank are entrusted to a Central Board of Directors, consisting of a Governor and two Deputy-Governors appointed by the Governor-General in Council, four Directors nominated by the Governor-General in Council, eight Directors elected on behalf of the shareholders on the various registers, and one Government official nominated by the Governor-General in Council.

"Reliance on the Bank to play its due part in safeguarding India's financial stability and credit clearly demands", said the Select Joint Committee, "that at all events its essential features should be protected against amendments of the law which would destroy their effect for the purpose in view."

The British Legislature has enacted—by section 152 of the new Act—that the Governor-General is to exercise the following functions in relation to the Bank in his discretion—

(*a*) the appointment and removal from office of the Governor and Deputy-Governors of the Bank, the approval of their salaries and allowances, and the fixing of their terms of office;

(*b*) the appointment of an officiating Governor or Deputy-Governor of the Bank;

(*c*) the supersession of the Central Board of the Bank and any action consequent thereon; and

(*d*) the liquidation of the Bank.

In nominating directors of the Bank and in removing from office any director nominated by him the Governor-General is to exercise his individual judgment.

Further, it is provided by section 153 that no Bill or amendment which affects the coinage or currency of the Federation or the constitution or functions of the Bank is to be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

IV. REMISSIONS TO THE STATES

The Joint Select Committee pointed out that the entry of the States into the Federation involved some complicated financial adjustments, mainly in respect of tributes and ceded territories. These adjustments were examined in the Report of the Indian States Enquiry Committee 1932 (Cmd. 4103); and they are dealt with by section 147 of the Act.

This section contains provisions whereby His Majesty, in signifying his acceptance of the Instrument of Accession of a State, may agree to remit over a period not exceeding twenty years from the date of the accession of the State to the Federation any cash contributions payable by that State.

The section further provides that where any territories have been voluntarily ceded to the Crown by a Federated State before the passing of the Act—

(*a*) in return for specific military guarantees; or

(*b*) in return for the discharge of the State from obligations to provide military assistance,

there are, if His Majesty, in signifying his acceptance of the Instrument of Accession of that State, so directs, to be paid to that State (but in the first-mentioned case on condition that such guarantees are waived) such sums as, in the opinion of His Majesty, ought to be paid in respect of any such cession.

Every such agreement or direction is to be such as to secure that no such remission or payment shall be made until the Provinces have begun to receive moneys under section 138 (relating to taxes on income). In the case of a remission it is to be complete before the expiration of twenty years from the date of the accession to the Federation of the State in question, or before the end of the second prescribed period referred to in section 138 (2), whichever first occurs.

No such contribution is to be remitted by virtue of any such agreement save in so far as it exceeds the value of any privilege or immunity enjoyed by the State. In fixing the amount of any payments in respect of ceded territories, account is to be taken of the value of any such privilege or immunity.

The section is to apply in the case of any cash contributions the liability for which has been discharged by payment of a capital sum or sums. Accordingly His Majesty may agree that the capital sum or sums so paid shall be repaid either by instalments or otherwise, and such repayments are to be deemed to be remissions for the purposes of the section.

In this section "cash contributions" means—

(*a*) periodical contributions in acknowledgment of the suzerainty of His Majesty, including contributions payable in connection with any arrangement for the aid and protection of a State by His Majesty, and contributions in commutation of any obligation of a State to provide military assistance to His Majesty, or in respect of the maintenance by His Majesty of a special force for service in connection with a State, or in respect of the maintenance of local military forces or police, or in respect of the expenses of an agent;

(*b*) periodical contributions fixed on the creation or restoration of a State, or on a re-grant or increase of territory, including annual payments for grants of land on perpetual tenure or for equalisation of the value of exchanged territory;

(*c*) periodical contributions formerly payable to another State but now payable to His Majesty by right of conquest, assignment or lapse.

"Privilege or immunity" means any such right, privilege, advantage or immunity of a financial character as is hereinafter mentioned (not being a right, privilege, advantage or immunity surrendered upon the accession of the State, or one which, in the opinion of His Majesty, for any other reason ought not to be taken into account), that is to say—

(*a*) rights, privileges or advantages in respect of, or connected with, the levying of sea customs or the production and sale of untaxed salt;

(*b*) sums receivable in respect of the abandonment or surrender of the right to levy internal customs

duties, or to produce or manufacture salt, or to tax salt or other commodities or goods in transit, or sums receivable in lieu of grants of free salt;

(*c*) the annual value to the Ruler of any privilege or territory granted in respect of the abandonment or surrender of any such right as is mentioned in the last preceding paragraph;

(*d*) privileges in respect of free service stamps or the free carriage of State mails on government business;

(*e*) the privilege of entry free from customs duties of goods imported by sea and transported in bond to the State in question; and

(*f*) the right to issue currency notes.

The Separation of Burma

With the view to preventing undue disturbance of trade in the period immediately following the separation of India and Burma, and with a view to safeguarding the economic interests of Burma during that period, it is provided by section 160 that His Majesty in Council may give such directions as he thinks fit for those purposes with respect to the duties which are, while the Order is in force, to be levied on goods imported into or exported from India or Burma and with respect to ancillary and related matters. Effect was given to this section by the India and Burma (Trade Regulation) Order 1937 (S.R. & O., 1937, No. 268), which provides, in substance, that the customs duties leviable before the separation on goods imported to or exported from either territory shall remain the same.

CHAPTER X

FEDERAL RAILWAY AUTHORITY

I. *Functions and Composition*
II. *The Railway Tribunal*

I. FUNCTIONS AND COMPOSITION

THE making of provision for the control of railways is a recurrent problem in the establishment of a Federation. The experience of the Commonwealth of Australia, where the railways have been constructed to meet the needs of the constituent States rather than the Federation, seemed to indicate the necessity of Federal control. The White Paper suggested that, while the Federal Government and Legislature should exercise a general control over railway policy, the actual administration of the railways in India (including those worked by companies) should be placed by the Constitution Act in the hands of a statutory Railway Authority.

This scheme was adopted in the Report of the Joint Select Committee and effect is given to it by section 181, which provides that the executive authority of the Federation in respect of the regulation, construction, maintenance and operation of railways is to be exercised by a Federal Railway Authority. The executive authority of the Federation is defined as extending to the organisation of undertakings which are ancillary to the maintenance of railways. Hence it follows that

the Federal Railway Authority can establish road services or enter into agreements with other bodies to run road services in connection with their railways. But, notwithstanding this provision, the Federal Government or its officers are to perform in regard to the construction, equipment and operation of railways such functions for securing the safety both of members of the public and of persons operating the railways, including the holding of inquiries into the causes of accidents, as, in the opinion of the Federal Government, should be performed by persons independent of the Authority and of any railway administration.

Section 183 provides that the Federal Railway Authority, in discharging their functions under the Act, are to act on business principles, due regard being had by them to the interests of agriculture, industry, commerce and the general public, and, in particular, are to make proper provision for meeting out of their receipts on revenue account all expenditure to which such receipts are applicable under the provisions of the Act. In the discharge of their functions they are to be guided by such instructions on questions of policy as may be given to them by the Federal Government. If any dispute arises as to whether a question is or is not a question of policy, the decision of the Governor-General in his discretion is to be final.

The powers which the Governor-General possesses of taking action in virtue of his special responsibilities and in respect of the reserved subjects extends to the giving of directions to the Railway Authority; and, since this Authority is a Federal Authority, in the event of a breakdown of the Constitution he may assume to himself their powers.

Except in such classes of cases as may be specified in regulations to be made by the Federal Government, the Railway Authority is not to acquire or dispose of any land, and, when it is necessary for them to acquire compulsorily any land for the purposes of their functions, the Federal Government is to cause that land to be acquired on their behalf and at their expense.

Under the joint operation of section 185 and the eighth schedule to the Act, the Federal Railway Authority is to be a body corporate which may sue and be sued in that name and in the like manner and in the like cases as a company operating a railway may sue and be sued. Contracts made by or on behalf of the Authority are to be enforceable by or against the Authority and not the Federation.

The members of the Federal Railway Authority are to be appointed partly by the Governor-General in his discretion, and partly by the Federal Government. No person is to be qualified to be appointed a member of the Railway Authority unless: (*a*) he has had experience in commerce, industry, agriculture, finance, or administration, or (*b*) he is, or within the twelve months last preceding, has been: (i) a member of the Federal or any Provincial Legislature; (ii) in the service of the Crown in India; or (iii) a railway officer in India.

The head of the executive staff of the Federal Railway Authority is to be a Chief Railway Commissioner. He is to be a person with experience of railway administration, and will be appointed by the Governor-General, exercising his individual judgment, after consultation with the Authority. The Chief Railway Commissioner is to be assisted by a Financial Commissioner appointed by the Federal Government. Further, the Authority,

upon the recommendation of the Chief Railway Commissioner, may appoint additional Commissioners. Though not members of the Authority, the Chief Railway Commissioner and the Financial Commissioner are to have the right to attend all its meetings.

II. THE RAILWAY TRIBUNAL

The Railway Authority and every Federated State are to exercise their powers in relation to the railways with which they are respectively concerned so as to afford all reasonable facilities for the receiving, forwarding, and delivery of traffic upon and from those railways, and so as to secure that there shall be between one railway system and another no unfair discrimination by the granting of undue preferences or otherwise and no unfair or uneconomic competition. Complaints that these provisions have not been complied with are to be made to and determined by a body called the Railway Tribunal.

If the Railway Authority, in the exercise of any executive authority of the Federation in relation to interchange of traffic or maximum or minimum rates and fares or station or service terminals, give any direction to a Federated State, the State may complain that the direction discriminates unfairly against the railways of the State or imposes on the State an obligation to afford facilities which are not in the circumstances reasonable. Such complaints are to be determined by the Railway Tribunal.

The composition and jurisdiction of this Court is provided for by section 196. It is to consist of a President and two other persons to be selected to act in each case

by the Governor-General from a panel of eight persons appointed by him and having railway, administrative or business experience. The President is to be such one of the judges of the Federal Court as may be appointed for the purpose by the Governor-General after consultation with the Chief Justice of India.

The jurisdiction of the Tribunal is to adjudicate upon the complaints mentioned and upon objections raised with respect to the construction or reconstruction of railways. For the purpose of exercising this jurisdiction the Tribunal may make such orders, including interim orders, orders varying or discharging a direction or order of the Federal Railway Authority, orders for the payment of compensation or damage and of costs, and orders for the production of documents and the attendance of witnesses, as the circumstances of the case may require; and it is to be the duty of the Railway Authority and of every Federated State and of every person or authority affected to give effect to any such order.

An appeal is to lie to the Federal Court from any decision of the Railway Tribunal on a question of law. Judgment of the Federal Court on the hearing of such appeal is to be final.

CHAPTER XI

THE JUDICATURE

I. *The Federal Court*
II. *The High Courts in British India*
III. *District Judges*
IV. *The Subordinate Judiciary*

I. THE FEDERAL COURT

A FEDERAL Court has been established under the Act. As was pointed out in the Report of the Joint Select Committee, it is an essential element in a Federal Constitution. "It is at once the interpreter and guardian of the Constitution and a tribunal for the determination of disputes between the constituent units of the Federation."

The Government of India (Commencement and Transitory Provisions) Order 1936 (S.R. & O., 1936, No. 672) provided that the sections of the Act relating to the Federal Court should come into operation on such date as His Majesty might by Order in Council appoint. Under the terms of this Order, the Government of India (Federal Court) Order 1936 (S.R. & O., 1936, No. 1323) was made under which the majority of the provisions relating to the Federal Court came into force on 1st October 1937. The Court held its inaugural sitting at Delhi on 6th December 1937.

The Act provides that the Federal Court shall consist of

a Chief Justice of India and such number of other judges as His Majesty may deem necessary. The puisne judges are not, however, to exceed six unless and until an address has been presented by the Federal Legislature to the Governor-General for submission to His Majesty praying for an increase in the number.

Every judge of the Federal Court is to be appointed by His Majesty and is to hold office until he attains the age of sixty-five years. But a judge may resign his office; and he may be removed therefrom by His Majesty on the ground of misbehaviour or of infirmity of mind or body if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.

A person is not qualified for appointment as a judge of the Federal Court unless he—

(*a*) has been for at least five years a judge of a High Court in British India or in a Federated State; or

(*b*) is a barrister of England or Northern Ireland of at least ten years' standing, or a member of the Faculty of Advocates in Scotland of at least ten years' standing; or

(*c*) has been for at least ten years a pleader of a High Court in British India or in a Federated State or of two or more such Courts in succession.

(NOTE.—The expression "pleader" includes advocate.)

A person is not, however, to be qualified for appointment as Chief Justice of India unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader. Further in relation to the Chief Justice of India for the references in

paragraphs (*b*) and (*c*) above to ten years there are to be substituted references to fifteen years.

Rules governing the conditions of service of the Judges of the Federal Court are contained in the Government of India (Federal Court) Order 1937 (S.R. & O., 1937, No. 703) made on the 29th July 1937.

The first Chief Justice of India is Sir Maurice Linford Gwyer (formerly first Parliamentary counsel to the Treasury), and Sir Shah Muhammad Sulaiman (formerly Chief Justice of the Allahabad High Court) and Mr. M. R. Jayakar (an eminent lawyer who shared in the making of the new Constitution) have been appointed Judges of the Court.

The Federal Court will sit at Delhi and at such other place or places, if any, as the Chief Justice of India may, with the approval of the Governor-General, from time to time appoint. It will have—

1. **An original jurisdiction.**
2. **An appellate jurisdiction in appeals from High Courts in British India.**
3. **An appellate jurisdiction in appeals from High Courts in Federated States.**

The original jurisdiction of the Federal Court is thus defined in the Act—

204.—(1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to—

(a) a dispute to which a State is a party, unless the dispute—

(i) concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State; or

(ii) arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State; or

(iii) arises under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, between that State and the Federation or a Province being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute;

(b) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute.

(2) The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment other than a declaratory judgment.

It is to be observed that the section refers to a dispute involving "any question (whether of law or fact) on which the existence or extent of a legal right depends". In Warren *v.* Murray (1894, 2 Q.B. 648), Lord Esher, M.R., said that the actual legal rights of the parties meant their equitable as well as their Common Law rights.

"Substantial Question of Law"

Section 205 deals with the appellate jurisdiction of the Federal Court in appeals from High Courts in British India. Pursuant to the provisions of the Government of India (Federal Court) Order 1936 (S.R. & O., 1936, No. 1323), this section came into force on 1st April 1937. It is to be observed that an appeal will lie from any judgment, decree or final order of a High Court "if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder". The section is as follows—

> 205.—(1) An appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder, and it shall be the duty of every High Court in British India to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.
>
> (2) Where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question as aforesaid has been wrongly decided, and on any ground on which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given, and, with the leave of the Federal Court, on any other ground, and no direct appeal shall lie to His Majesty in Council, either with or without special leave.

Appeals from India to the Judicial Committee of the Privy Council are provided for by sections 109-112 of the Indian Code of Civil Procedure.

The words "substantial question of law" occur in section 110 of the Code—"and where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law". In Karuppanan Servai *v.* Srinivasan Chetti (1901, L.R., 29 I.A. 38), where the Madras High Court gave leave to appeal stating by their Order, "There seems to be a point of law, which, however, does not appear to have been argued here", the Judicial Committee dismissed the appeal without a hearing. In Hanuman Prasad *v.* Bhagwati Prasad (1902, 24 I.L.R. All. 236), it was suggested that the words "substantial question of law" mean a question of great public or private importance.

Enlargement of Appellate Jurisdiction

By section 206 of the Act power is given to the Federal Legislature, where the sanction of the Governor-General for the introduction of the measure has been obtained, to provide by Act that in such civil cases as may be specified therein an appeal shall lie to the Federal Court from a judgment decree or final order of a High Court in British India without any certificate. No appeal, however, is to lie under any such Act unless—

(*a*) the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as may be specified by the Act, or the judgment decree or final order involves directly or indirectly some claim or

question respecting property of the like amount or value; or

(*b*) the Federal Court gives special leave to appeal.

If the Federal Legislature thus enlarges the appellate jurisdiction of the Federal Court consequential provision may also be made for the abolition in whole or in part of direct appeals in civil cases from High Courts in British India to the Judicial Committee of the Privy Council, either with or without special leave.

The provision for the enlargement of the appellate jurisdiction of the Federal Court takes the place of the proposal contained in the White Paper (Cmd. 4268) for the establishment of a separate Supreme Court to hear appeals from the Provincial High Courts. The Joint Select Committee did not feel able to recommend the adoption of this proposal. "A Supreme Court of this kind", the Report pointed out, "would be independent of and in no sense subordinate to the Federal Court; but it would be impossible to avoid a certain overlapping of jurisdictions, owing to the difficulty of determining in particular cases whether or not a constitutional issue was raised by a case under appeal. This might involve the two Courts in undignified and very undesirable disputes." In the event of the appellate jurisdiction of the Federal Court being enlarged, the Joint Select Committee assumed that the Court would sit in two Chambers, the first dealing with federal cases and the second with British India appeals. Effect is given to this view by section 214 of the Act, which enacts that, if the Federal Legislature makes provision for enlarging the appellate jurisdiction of the Court, the rules shall provide for "the constitution of a special division of the

Court for the purpose of deciding all cases which would have been within the jurisdiction of the Court even if its jurisdiction had not been so enlarged".

Under section 207 of the Act an appeal will lie to the Federal Court from a High Court in a Federated State by way of special case to be stated on the ground that a question of law has been wrongly decided. Such question must be one which—

(i) concerns the interpretation of the Act or of an Order in Council made thereunder; or

(ii) concerns the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State; or

(iii) arises under an agreement made under Part VI of the Act (which deals with administrative relations between Federation, Provinces and States) in relation to the administration in that State of a law of the Federal Legislature.

Appeals to Privy Council

Section 208 provides that an appeal may be brought to the Judicial Committee of the Privy Council from a decision of the Federal Court as follows—

Without leave— From any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of the Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any State, or arises under an agreement made under Part VI of the Act in relation to the administration in any State of a law of the Federal Legislature.

By leave of the Federal Court or of His Majesty in Council—In any other case.

In the construction of statutes and all written instruments the Judicial Committee of the Privy Council have consistently acted on the golden rule referred to by Lord Wensleydale in Grey v. Pearson (1857, 6 H.L. Cas. 61) at p. 106—" . . . in construing . . . statutes and all written instruments the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther".

Another rule of statutory interpretation was stated thus by Lord Justice James in Greaves *v.* Tofield (1880, 14 Ch. D. 563) at p. 571—"If an Act of Parliament uses the same language which was used in a former Act of Parliament referring to the same subject, and passed with the same purpose, and for the same object, the safe and well-known rule of construction is to assume that the Legislature when using well-known words upon which there have been well-known decisions uses those words in the sense which the decisions have attached to them". To the rule as so stated Lord Macmillan, in Barras *v.* Aberdeen Steam Trawling and Fishing Company Limited (1933, A.C. 402) at p. 447, said he was prepared whole-heartedly to subscribe.

In Simms *v.* The Registrar of Probates (1900, A.C. 323)—an appeal from the Supreme Court of South Australia—Lord Hobhouse, speaking for the Judicial Committee in relation to the construction of a statute

said, "It is quite true, as Bundey J. intimates when he is pointing out the severity of the law, that Courts must nevertheless construe it according to its true meaning. But where there are two meanings each adequately satisfying the language, and great harshness is produced by one of them, that has legitimate influence in inclining the mind to the other."

The principles upon which the Judicial Committee have acted in granting special leave to appeal from the Supreme Court of the Dominion of Canada (and Federal Courts in other self-governing Dominions) were stated thus in Prince *v.* Gagnon (1882, 8 App. Cas. 103)— "Their Lordships are not prepared to advise Her Majesty to exercise her prerogative by admitting an appeal to Her Majesty in Council from the Supreme Court of the Dominion, save where the case is of gravity involving matter of public interest or some important question of law, or affecting property of considerable amount or where the case is otherwise of some public importance or of a very substantial character". See also Clerque *v.* Murray (1903, A.C. 521).

The Judicial Committee will not review criminal proceedings unless it be shown that by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise substantial and grave injustice has been done (In re Abraham Mallory Dillet, 1887, 12 App. Cas. 459). In Mohindar Singh *v.* The King-Emperor (1932, L.R., 59 I.A. 233), Lord Dunedin said their Lordships had frequently stated that they do not sit as a Court of Criminal Appeal. For them to interfere with a criminal sentence there must be something so irregular or so outrageous as to shock the very basis of justice. Such an instance was found in

Dillet's case, which has always been held to be the leading authority on such matters.

It will have been observed that section 110 of the Act—which is set out in Chapter VII of this book—preserves the prerogative right of His Majesty to grant special leave to appeal from any Court.

"We may perhaps point out", said the Joint Select Committee in their Report, "that the jurisdiction of the Privy Council in relation to the States will be based upon the voluntary act of the Rulers themselves, *i.e.* their Instruments of Accession".

Federal Court Decisions

Where the Federal Court allows an appeal it is to remit the case to the Court from which the appeal was brought with a declaration as to the judgment, decree or order which is to be substituted for the judgment, decree or order appealed against. The Court from which the appeal was brought is to give effect to the decision of the Federal Court.

Under section 210 all authorities, civil and judicial, throughout the Federation are to act in aid of the Federal Court.

Section 212 provides that the law declared by the Federal Court and by any judgment of the Privy Council shall, so far as applicable, be recognised as binding on all Courts in British India. It is also to be binding in any Federated State so far as respects the application and interpretation of this Act or any other Order in Council thereunder or any other matter with respect to which the Federal Legislature has power to make laws in relation to the State.

Advisory Jurisdiction

Authority is given to the Governor-General by section 213 to consult the Federal Court if at any time it appears to him that a question of law has arisen or is likely to arise which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Court upon it; and the Court may, after such hearing as they think fit, report to the Governor-General thereon. No report is to be made under this section save in accordance with an opinion delivered in open Court with the concurrence of a majority of the Judges present at the hearing. Dissenting opinions may, however, be delivered.

This advisory jurisdiction of the Federal Court is analogous to that possessed by the Privy Council under section 4 of the Judicial Committee Act 1833, which provides that His Majesty may refer to the Committee for hearing or consideration any matters whatsoever as His Majesty may think fit, and that the Committee shall thereupon hear and consider the same, and shall advise His Majesty thereon. A case where this procedure was adopted is In re Piracy Jure Gentium (1934, A.C. 586).

Procedure under the Judicial Committee Act 1833, differs from that under section 213 in one respect—dissenting judgments are not delivered in the Privy Council. In allowing expression of dissent the Federal Court follows the practice of the International Court at The Hague.

All proceedings in the Federal Court are in the English language.

Federal Court Rules

Rules made under section 214 of the new Act governing the practice and procedure of the Federal Court

were notified in *The Gazette of India* on 2nd December 1937 and are set out in the Appendix to this book.

II. THE HIGH COURTS IN BRITISH INDIA

Under section 219 the following Courts are deemed to be High Courts for the purposes of the Act—

The High Courts in Calcutta, Madras, Bombay, Allahabad, Lahore, and Patna.

The Chief Court in Oudh.

The Judicial Commissioner's Courts in the Central Provinces and Berar, in the North-West Frontier Province and in Sind.

Any other Court in British India constituted or reconstituted as a High Court.

Any other comparable Court in British India which His Majesty in Council may declare to be a High Court for the purposes of the Act.

Courts were established in Bengal, Madras and Bombay by a Charter of George I in 1726. That Charter gave an appeal to His Majesty in Council. The statute 37 Geo. III, c. 142—"an Act for the better administration of justice at Calcutta, Madras and Bombay"—authorised the issue of Letters Patent whereby Supreme Courts were established. Then in 1861, by the statute 24 & 25 Vict. c. 104—"an Act for establishing High Courts of Judicature in India"—the Crown was empowered to erect and establish by Letters Patent High Courts of Judicature at Calcutta, Madras and Bombay. These Courts were in fact constituted pursuant to that Act by Letters Patent dated 28th December 1865, which contained rules defining their jurisdiction, civil and criminal, and providing for appeals to the Privy Council.

Letters Patent establishing a High Court for the North-Western Provinces, now called the High Court of Judicature at Allahabad, were issued in 1866. The High Court at Patna was established in 1916 and that at Lahore in 1919.

The Chief Court in Oudh was established in 1926 in place of a Judicial Commissioner's Court. Its jurisdiction corresponds substantially to that of a High Court.

Prior to the passing of the new Act, the High Court at Calcutta was mainly under the jurisdiction of the Central Government. The other High Courts were under the jurisdiction of the local Governments. The Joint Select Committee reported in favour of bringing the Calcutta High Court into the same relationship with the Bengal Government as that obtaining between all other High Courts and their respective Provincial Governments; and the new Act makes provision accordingly.

Appointment of Judges

Under section 220 of the Act every High Court is to be a court of record and is to consist of a Chief Justice and "such other judges as His Majesty may from time to time deem it necessary to appoint".

Thus the former statutory requirement that not less than one-third of the Judges of every High Court must have been called to the English, Scottish or Irish Bar, and that not less than one-third must be members of the Indian Civil Service, is abrogated. "We are informed", said the Joint Select Committee in their Report, "that the rigidity of this rule has sometimes caused difficulty in the selection of Judges". They expressed themselves as clear, however, that the Indian Civil Service Judges are an important and valuable element in the judiciary,

and that their presence adds greatly to the strength of the High Courts.

Before the Act the Indian Civil Service Judges were not eligible for permanent appointment as Chief Justice of a High Court. His Majesty's freedom of choice is no longer fettered in this respect.

"We need hardly add", said the Joint Select Committee, "that our acceptance of the proposal to abrogate the statutory proportion so far as barristers are concerned implies no doubt as to the necessity of continuing, in the interests of the maintenance of British legal traditions, to recruit a reasonable proportion of barristers or advocates from the United Kingdom as Judges of the High Courts."

Every Judge of a High Court is to be appointed by His Majesty and is to hold office until he attains the age of sixty years. (As has been noted, the retiring age of a Judge of the Federal Court is sixty-five years.) But he may resign his office; and he may be removed therefrom in the same manner as a Judge of the Federal Court.

A person is not qualified for appointment as a Judge of a High Court unless he—

(*a*) is a barrister of England or Northern Ireland of at least ten years' standing or a member of the Faculty of Advocates in Scotland of at least ten years' standing; or

(*b*) is a member of the Indian Civil Service of at least ten years' standing who has for at least three years served as or exercised the powers of a District Judge; or

(*c*) has for at least five years held a judicial office in

British India not inferior to that of a subordinate judge or judge of a small cause court; or

(*d*) has for at least ten years been a pleader of any High Court or of two or more such Courts in succession.

A person is not, however, unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader, to be qualified for appointment as Chief Justice of any High Court constituted by Letters Patent until he has served for not less than three years as a judge of a High Court.

The conditions of service of High Court Judges are regulated by the Government of India (High Court Judges) Order 1937 (S.R. & O., 1937, No. 257).

The jurisdiction of existing High Courts is maintained.

Every High Court will have superintendence over all courts in India for the time being subject to its appellate jurisdiction and may—

(*a*) call for returns;

(*b*) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(*c*) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and

(*d*) settle tables of fees to be allowed to the sheriff, attorneys and all clerks and officers of courts.

Transfer of Cases to High Court

Under section 225 if, on application, a High Court is satisfied that a case pending in an inferior Court,

being a case which the High Court has power to transfer to itself for trial, involves or is likely to involve the question of the validity of any Federal or Provincial Act, it is to exercise that power. An application for this purpose is not to be made except, in relation to a Federal Act, by the Advocate-General for the Federation and, in relation to a Provincial Act, by the Advocate-General for the Federation or the Advocate-General for the Province.

The Marquess of Zetland stated in the House of Lords on 4th July 1935 that the purpose of this section was to minimise the inconvenience caused by the possibility of an Act being challenged as *ultra vires*.

Until otherwise provided by Act of the appropriate Legislature, no High Court will have any original jurisdiction in any matter concerning the revenue or concerning any act ordered or done in its collection.

As in the case of the Federal Court, all proceedings in every High Court are in the English language.

III. DISTRICT JUDGES

The appointment, posting and promotion of District Judges in any Province is to be made by the Governor of the Province, exercising his individual judgment. The High Court is to be consulted before a recommendation as to the making of any such appointment is submitted to the Governor.

A person not already in the service of His Majesty is only to be eligible for appointment as a District Judge if he has been for not less than five years a barrister, a member of the Faculty of Advocates in Scotland, or a pleader, and is recommended by the High Court for appointment.

The expression "District Judge" is defined as including additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge.

IV. THE SUBORDINATE JUDICIARY

The Joint Select Committee were insistent in their Report upon the necessity of securing the independence of the subordinate Judiciary. "It is the Subordinate Judiciary in India", they said, "who are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question than in the case of the superior Judges". Effect is sought to be given to these views in sections 255 and 256 of the Act.

Section 255 deals with the subordinate civil judicial service, which is defined as meaning "a service consisting exclusively of persons intended to fill civil judicial posts inferior to the post of district judge".

The Governor of each Province is required, after consultation with the Provincial Public Service Commission and with the High Court, to make rules defining the standard of qualifications to be obtained by persons desirous of entering this service.

The Provincial Public Service Commission for each Province, after holding such examinations, if any, as the Governor may think necessary, are required from time to time to make a list or lists of the persons whom they consider fit for appointment to the subordinate civil judicial service. Appointments are to be made by

the Governor from the persons included in the list or lists "in accordance with such regulations as may from time to time be made by him as to the number of persons in the said service who are to belong to the different communities in the Province".

The posting and promotion of, and the grant of leave to, persons belonging to the subordinate civil judicial service of a Province, and holding any post inferior to that of District Judge, will be in the hands of the High Court. Any such person, however, will have the right of appeal provided by the Act.

Section 256 deals with the subordinate criminal magistracy. It provides that no recommendation shall be made for the grant of magisterial powers or of enhanced magisterial powers to, or the withdrawal of any magisterial power from, any person save after consultation with the District Magistrate of the district in which he is working or with the Chief Presidency Magistrate, as the case may be.

CHAPTER XII

THE SERVICES OF THE CROWN

I. *The Defence Forces*
II. *The Civil Services*
III. *Public Service Commissions*
IV. *Indemnity for Past Acts*
V. *Safeguarding of Pensions*

I. THE DEFENCE FORCES

PRIOR to 1st April 1937 the Secretary of State for India was the constitutional and legal head of the Government of India. Subject to his orders, responsibility for the Defence of India rested with the Governor-General in Council. The Commander-in-Chief was an executive member of the Council sharing responsibility with the other members.

During the transitional period between 1st April 1937 and the establishment of the Federation the Secretary of State for India will cease to be the constitutional and legal head of the Government of India, and executive responsibility will rest with the Governor-General in Council. Subject to the administrative changes which will be necessitated by the establishment of Provincial Autonomy, the old arrangements for defence will continue.

Once the Federation is established, both the political

and financial responsibility for Defence will rest with the Governor-General in his discretion, since Defence is a reserved subject. To assist him in the discharge of his functions the Governor-General may appoint a counsellor (see Chapter IV) who will have a right of audience, but not of voting in the Federal Legislature.

Although the financial control of Defence administration must be exercised by the Governor-General at his discretion, nevertheless it is the duty of the Governor-General to make such arrangements as may prove feasible to keep the Federal Department of Finance in close touch with this control. In addition, the Finance Minister is to be consulted before estimates of proposed expenditure for the Service of Defence are settled and laid before the Federal Legislature.

The Commander-in-Chief, who is to be appointed by His Majesty by Warrant under the Royal Sign Manual, will cease to be a "member of the Government," and will become the Governor-General's technical adviser on military matters. He will, of course, remain in supreme command of the armed forces in India. Clause XVIII of the Governor-General's draft Instrument of Instructions provides that the Governor-General shall obtain the views of the Commander-in-Chief on any matter which will affect the discharge of the latter's duties and shall transmit his opinion on such matters to the Secretary of State for India whenever the Commander-in-Chief may so request.

Indianisation of the Army

Commissions in Indian forces are to be granted by the King or by the officer duly authorised in that behalf.

Commissions can be granted to any person who might be, or has been, lawfully enlisted in the forces in India.

The Act does not make provision for the complete Indianisation of the Army within a specified time. The Joint Select Committee were given to understand, however, that the Governor-General's Instrument of Instructions will formally recognise the fact that the defence of India must, to an increasing extent, be the concern of the Indian people and not of the United Kingdom alone. In 1931 a scheme was introduced which provided for the Indianisation of the equivalent of one Cavalry Brigade and one Infantry Division complete with all arms and ancillary services.

The Joint Select Committee were assured that the scheme had been initiated by the military authorities in India with the fullest sense of their responsibility in the matter, and that further developments will depend upon the success of the experiment.

Pursuant to the assurance given to the Joint Select Committee, the Governor-General's draft Instrument of Instructions provides as follows: "And seeing that the Defence of India must to an increasing extent be the concern of the Indian people it is Our will in especial that Our Governor-General should have regard to this instruction in his administration of the Department of Defence; and notably that he shall bear in mind the desirability of ascertaining the views of his Ministers when he shall have occasion to consider matters relating to the general policy of appointing Indian officers to our Indian Forces, or the employment of our Indian Forces on service outside India".

The Secretary of State, acting in concurrence with

his Advisers, is to be the ultimate authority for deciding the conditions of service which are to govern the forces of the Crown in India. In particular, it is specifically enacted that rights of appeal enjoyed immediately prior to the passing of the Act shall remain.

II. THE CIVIL SERVICES

Constitution Acts applying to the Dominions, in general, provide for the public services in a simple manner. Existing holders of offices have their appointments confirmed or have compensation secured to them for their loss. In all other respects the regulation of conditions of service is left to the appropriate legislative or executive authority. But in India, for historical and political reasons, it was felt that similar constitutional treatment would be inexpedient.

Whilst the Government of India Act 1935 recognises that in principle the conditions of service of persons serving in civil capacities under the various governments should be regulated by Acts of the appropriate legislatures, it contains detailed provisions for the attainment of specific objects and the protection of particular service. Amidst the details, however, two cardinal rules may be discerned: first, that all civil service appointments are held from the Crown, and, secondly, that the Crown will protect its servants from injustice.

Every person who is a member of a civil service of the Crown in India or holds any civil post under the Crown in India holds office during His Majesty's pleasure. It follows that a civil servant has no right of action against the Crown for wrongful dismissal (Dunn *v.* The Queen (1896), 1. Q.B. 116). Notwithstanding the exist-

ence of this general rule, section 240 (4) enacts that any contract under which a person, not being a member of a civil service of the Crown in India, is appointed under the Act to hold a service post may—if the Governor-General or, as the case may be, a Governor, deems it necessary in order to secure the services of a person having special qualifications—provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate it.

Protection against Dismissal

Protection against dismissal by any authority subordinate to the authority by whom he was appointed is secured to every member of the civil services. In addition, the Act specifically provides that no member shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him. This rule is not to apply, however—

(*a*) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(*b*) where an authority empowered to dismiss a member or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.

The Secretary of State is to continue to make appointments to the civil services known as the Indian Civil Service, the Indian Medical Service (Civil) and

the Indian Police Service (to be known hereafter as "the Indian Police"). He is also authorised to make appointments to any service or services which he may deem it necessary to establish for the purpose of securing the recruitment of suitable persons to fill civil posts in connection with the discharge of any functions of the Governor-General which the Governor-General is by or under the Act required to exercise in his discretion.

The Secretary of State is empowered by section 247 to regulate the conditions of service of all persons appointed by him.

Grant of Compensation

Section 249 makes provision for the granting of compensation to any civil servant appointed by the Secretary of State in Council before the passing of the Act, whose conditions of service have been adversely affected by it. In order to provide for contingencies which it was impossible to foresee, the Secretary of State is also empowered under the same section to award compensation to any officer appointed by him in any other case in which he considers it to be just and equitable that compensation should be awarded.

Compensation awarded under the provisions of section 249 is to be paid out of the revenues of the Federation, or, if the Secretary of State so directs, out of the revenues of a Province.

Appointments to the other civil services are to be made—

(*a*) in the case of services of the Federation, and posts in connection with the affairs of the Federation,

by the Governor-General or such person as he may direct;

(*b*) in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor or such person as he may direct.

Conditions of Service

The Governor-General, or some other person authorised by him, is to make rules regulating the conditions of service of those persons employed in connection with the affairs of the Federation. A similar duty falls upon Governors with respect to Provincial civil services.

Section 241 (3) enacts that rules so made are to secure—

(*a*) that, in the case of a person who before the commencement of Part III of the Act (the establishment of Provincial Autonomy) was serving His Majesty in a civil capacity in India, no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made except by an authority which would have been competent to make such an order on 8th March 1926, or by some person empowered by the Secretary of State to give directions in that respect;

(*b*) that every such person as aforesaid shall have the same rights of appeal to the same authorities from any order which—

(i) punishes or formally censures him; or

(ii) alters or interprets to his disadvantage any rule

by which his conditions of service are regulated; or

(iii) terminates his appointment otherwise than upon his reaching the age fixed for superannuation,

as he would have had immediately before the commencement of Part III of the Act, or such similar rights of appeal to such corresponding authorities as may be directed by the Secretary of State or by some person empowered by the Secretary of State to give directions in that respect;

(*c*) that every other person serving His Majesty in a civil capacity in India shall have at least one appeal against any such order as aforesaid, not being an order of the Governor-General or a Governor.

With respect to other service matters, the appropriate Legislature may make regulations. This power, however, is subject to the provisions of section 247, which authorises the Secretary of State to regulate the conditions of service of officers appointed by him.

Under section 258 (1), provision is made for the protection of officers now serving. Civil posts in a Central Service Class I, a Central Service Class II, a Railway Service Class I, a Railway Service Class II or a Provincial Service are not to be abolished if their abolition would adversely affect any person who, immediately before the commencement of Part III of the Act, was a member of any such service. This general rule is subject to the power of the Governor-General and the Governors, exercising their individual judgments, to abolish posts in connection with the affairs of the Federation and Provinces respectively.

In addition, section 258 (2) enacts that the Governor-General and the Governors alone are authorised to make rules or orders which adversely affect the pay, allowances or pensions of any person who was serving in a Central Service Class I, a Railway Service Class I or a Provincial Service before the commencement of Part III of the Act.

This authority of the Governor-General does not apply to those members of the specified services who have been appointed by the Secretary of State or are officers in His Majesty's forces. With respect to these two classes of civil servants, the Secretary of State alone is empowered to abolish their offices or make rules adversely affecting their pay, allowances or pensions.

III. PUBLIC SERVICE COMMISSIONS

Under section 264, Federal and Provincial Public Service Commissions are to be established. Provision is made whereby the same Provincial Commission will be enabled to serve two or more Provinces jointly; or alternatively, it will be open to a Province to make use of the services of the Federal Public Service Commission, subject to an agreement with the Federal authorities.

It will be the duty of the Federal and Provincial Public Service Commissions to conduct examinations for appointments to the services of the Federation and Provinces respectively.

Subject to the powers of the Secretary of State, the Governor-General and the Governors to decree otherwise with respect to appointments made by each of them in their discretion, these Commissions are to be consulted—

(*a*) on all matters relating to methods of recruitment to civil services and for civil posts;

(*b*) on the principles to be followed in making appointments to civil services and posts, and in making promotions and transfers from one service to another, and on the suitability of candidates for such appointments, promotions or transfers;

(*c*) on all disciplinary matters affecting a person serving His Majesty in a civil capacity in India, including memorials or petitions relating to such matters;

(*d*) on any claim by or in respect of a person who is serving or has served His Majesty in a civil capacity in India that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of the Federation or, as the case may be, the Province;

(*e*) on any claim for the award of a pension in respect of injuries sustained by a person while serving His Majesty in a civil capacity in India, and any question as to the amount of any such award.

Section 266 (4) provides that this provision is not to be construed as requiring a Public Service Commission to be consulted with respect to the manner in which appointments and posts are to be allocated as between the various communities in the Federation or a Province or, in the case of the subordinate ranks of the various police forces in India, with respect to any of the matters mentioned in sub-paragraphs (*a*), (*b*) and (*c*) above.

The Governor-General or, as the case may be, a

Governor, may refer any other matter to a Public Service Commission.

Under section 267 an Act of the Federal Legislature or a Provincial Legislature may provide for the exercise of additional functions by the Federal Public Service Commission or, as the case may be, the Provincial Public Service Commission. A proviso adds, however, that—

(*a*) no Bill or amendment for such a purpose shall be introduced or moved without the previous sanction of the Governor-General in his discretion or, in the case of a Provincial Legislature, of the Governor in his discretion; and

(*b*) it shall be a term of every such Act that the functions conferred by it shall not be exercisable—

(i) in relation to any person appointed to a service or a post by the Secretary of State or the Secretary of State in Council, any officer in His Majesty's forces, or any holder of a reserved post, except with the consent of the Secretary of State; or

(ii) where the Act is a Provincial Act, in relation to any person who is not a member of one of the services of the Province, except with the consent of the Governor-General.

IV. INDEMNITY FOR PAST ACTS

Section 270 (1) and (2) provides an indemnity for past acts. It is enacted that—

270.—(1) No proceedings civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor-General in his discretion, and in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province in his discretion.

(2) Any civil or criminal proceedings instituted, whether before or after the coming into operation of this Part of this Act, against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date shall be dismissed unless the court is satisfied that the acts complained of were not done in good faith, and where any such proceedings are dismissed the costs incurred by the defendant shall, in so far as they are not recoverable from the persons instituting the proceedings, be charged, in the case of persons employed in connection with the functions of the Governor-General in Council or the affairs of Burma, on the revenues of the Federation, and in the case of persons employed in connection with the affairs of a Province, on the revenues of that Province.

For the purposes of this section the expression "the relevant date" means, in relation to acts done by persons employed about the affairs of a Province or about the affairs of Burma, the commencement of Part III of the Act (the establishment of Provincial Autonomy), and in relation to acts done by persons employed about the affairs of the Federation, the date of the establishment of the Federation.

V. SAFEGUARDING OF PENSIONS

Under section 247 the pensions of persons appointed to a civil service by the Secretary of State are to be charged upon the revenues of the Federation. It follows that estimates of expenditure relating to pensions will not be submitted to the vote of the Legislature.

Pensions of retired officers and the pensions of their dependants are to be exempt from Indian taxation if the pensioner is residing permanently outside India.

As an additional safeguard for pensions the Governor-General is to have a special responsibility for "the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests".

On 4th July 1935 the Marquess of Zetland pointed out in the House of Lords that in respect of this special responsibility the Governor-General will be acting upon his individual judgment; and, as will be remembered, under section 14, when he is so acting, he has to accept the instructions of the Secretary of State. If the money required for paying pensions is not actually available, the Secretary of State is empowered, if he considers it necessary, to instruct the Governor-General to borrow in sterling in London on the security of the revenues of India.

Family Pension Funds

The Act also contains detailed provisions as to—

(*a*) The Indian Military Widows and Orphans Fund.

(*b*) The Superior Services (India) Family Pension Fund.

(*c*) A Fund to be formed out of the moneys contributed and to be contributed under the Indian Military Service Family Pension Regulations.

(*d*) A Fund to be formed out of the moneys contributed and to be contributed under the Indian Civil Service Family Pension Rules.

Under section 273 His Majesty may by Order in Council provide for the vesting in Commissioners of the various funds, which are then to be invested by them. It follows that from the date of such Order these funds will cease to be charged upon the revenues of India.

The transfer from the revenues of India to investments may result in variations in the amounts of the benefits payable. Subscribers and beneficiaries who are apprehensive of a reduction of benefits as a result of such transfer may object, and if any objection is so made—

(*a*) So much of any money in the hands of the Governor-General as represents the interest of the objector shall not be transferred to the Commissioners, but shall be dealt with as part of the revenues of the Federation; and

(*b*) in lieu of any pensions which might be payable out of the said funds to or in respect of the objectors there shall be payable out of the revenues of the Federation to or in respect of them such pensions on such conditions as may be specified in rules to be made by the Secretary of State.

CAHPTER XIII

THE SECRETARY OF STATE

The Secretary of State for India is the Crown's responsible agent for the exercise of all authority vested in the Crown in relation to the affairs of India. It is to the Secretary of State that the Governor-General and the Governors are constitutionally responsible for the exercise of their special powers or when acting in their discretion. By reason of the conventions of the British Constitution, this Minister is always a member of the Cabinet and of Parliament, to which bodies he is responsible for his actions.

Dissolution of Council of India

Under existing statutory provisions, the Secretary of State, in addition to his authority as responsible agent of the Crown, exercised authority which he derived directly from powers vested in the Court of Directors and the Court of Proprietors of the East India Company. In the exercise of certain powers, specified by statute, the Secretary of State had to seek the advice of, and act in conjunction with, the Council of India, the two together being known as the Secretary of State for India in Council. The Council itself consisted of the Secretary of State and not fewer than eight nor more than twelve members, of whom at least one-half must have served or resided in India for ten years or more. The Secretary of State in Council had

power to dispose of real or personal estate vested in the Crown, to raise money by way of mortgage, and to make, vary and discharge contracts. At meetings of the Council, questions were decided by a majority vote, but the Secretary of State, could, if he thought fit, overrule the Council except on certain matters for the decision of which a majority of the Council present and voting was required. These matters were—

(1) grants or appropriation of any part of the revenues of India;

(2) the sale or disposal of real or personal estate and the raising of money thereon by mortgage or otherwise;

(3) the making of contracts, including instruments of contract of civil offices in India;

(4) the application to the Government of India and the Local Governments of authority to perform on behalf and in the name of the Secretary of State in Council any of the obligations of the last two heads;

(5) the passing of any order affecting the salaries of members of the Governor-General's Council; and

(6) the making of rules regulating various matters connected with the Indian Public Services.

Under the Government of India Act 1858, section 65 (re-enacted in the Government of India Act 1915, section 32), suits by or against the Government of India or any Local Government or any official in their employment, had to be instituted in the name of the Secretary of State in Council.

In the Report of the Joint Select Committee it was pointed out that under a system of responsible govern-

ment in India, the Secretary of State in Council was an anomaly. It would no longer be necessary, for example, with the transfer of responsibility for finance to Indian Ministers, that there should continue to be a body in the United Kingdom with a statutory control over the decisions of the Secretary of State in financial matters. In order to avoid the inconsistency between the doctrine of ministerial responsibility and the existence of certain of the powers of the Secretary of State in Council, section 278 (8) of the Act provides that the Council of India, as existing immediately before the commencement of Part III of this Act (the establishment of Provincial Autonomy), shall be dissolved; and section 2 enacts that "any rights, authority and jurisdiction . . . heretofore exercisable in or in relation to any territories in India" by the Secretary of State or the Secretary of State in Council shall vest in the Crown.

A Small Body of Advisers

The White Paper, however, suggested that the Secretary of State under the proposed constitution should have a small body of Advisers to whom he could turn for advice on financial and service matters and on matters which concerned the Political Department. The Report of the Joint Select Committee concurred with this proposal, and effect is given to it by section 278, which provides that the Secretary of State shall appoint a body of persons, not being less than three nor more than six in number. It will be the duty of the persons so appointed to advise the Secretary of State on any matter relating to India on which he may seek their advice. At least one-half of the persons for the

time being holding office as Advisers to the Secretary of State must have held office for ten years or more under the Crown in India.

It is within the discretion of the Secretary of State whether he consults his Advisers either collectively or individually or not at all. Even when he does consult them, he is not bound to act on the advice which they tender. Section 261 enacts, however, that the Secretary of State must consult his Advisers and obtain the concurrence of the majority of them when exercising the powers conferred on him by Part X of the Act. Under that Part, the Secretary of State remains the authority charged with the control of the members of certain Public Services in India, and is empowered, subject to section 261, to make rules regulating conditions of service, and to draw up orders in connection with appeals to him from any member of those services.

The dissolution of the Council of India necessitated provisions for the vesting of property and liability for suits. Under section 173 (2) property vested in His Majesty and under the control of the Secretary of State in Council immediately before the commencement of Part III of the Act is, after that date, to vest in His Majesty for the purposes of the Government of the Federation, for the purposes of the exercise of the functions of the Crown in its relations with Indian States or for the purposes of the Government of a Province, according as the Secretary of State may determine having regard to the circumstances of the case. The Secretary of State is to have power to deal with the property accordingly.

Under the Government of India Act 1915, section 29 (2), contracts made for the purposes of that Act were

expressed to be made by the Secretary of State in Council. Under section 175 (3) of this Act, all contracts made in the exercise of the executive authority of the Federation or of a Province are to be expressed to be made by the Governor-General, or by the Governor of the Province, as the case may be. Subsection (4) of that section enacts that neither the Governor-General, nor a Governor, nor the Secretary of State shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Act or of any other Act relating to the Government of India. The same protection extends to any other persons who may be directed or authorised to enter into a contract on their behalf.

The provision as to exemption from personal liability on contracts made for the purposes of the Act is a statutory recognition of a common law rule. At common law, officers of the Crown are in the same position as any other agent who acts on behalf of a disclosed principal (Macbeath *v.* Haldimand (1786), 1 Term Rep. 172; Gidley *v.* Palmerston (1822), 3 Brod. & Bing. 275).

Loans, guarantees and other financial obligations of the Secretary of State which were outstanding immediately before the commencement of Part III of the Act, and were secured on the revenues of India, become from that date the liabilities of the Federation and are secured upon the revenues of the Federation and of all the Provinces. In respect of other contracts made before the commencement of Part III of the Act by or on behalf of the Secretary of State in Council, section 177 enacts that, as from that date—

(1) the contracts which were in connection with the

affairs of a Province are to have effect as if they had been made on behalf of that Province; and

(2) in any other case, they are to have effect as if they had been made on behalf of the Federation.

Suits by or against the Federation

The Government of India Act 1915, section 32 (1) and (2), had provided that the Secretary of State in Council could sue and be sued in the name of the Secretary of State in Council as a body corporate. Litigants had the same remedies against the Secretary of State in Council as they would have had against the East India Company, if neither the Government of India Act 1858, nor the Government of India Act 1915, had been passed. The new Act provides—

> 176.—(1) The Federation may sue or be sued by the name of the Federation of India and a Provincial Government may sue or be sued by the name of the Province, and, without prejudice to the subsequent provisions of this chapter, may, subject to any provisions which may be made by Act of the Federal or a Provincial Legislature enacted by virtue of powers conferred on that Legislature by this Act, sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in Council might have sued or been sued if this Act had not been passed.
>
> (2) Rules of court may provide that, where the Federation, the Federal Railway Authority, or a Province sue or are sued in the United Kingdom, service of all proceedings may be effected upon the High Commissioner for India or such other representative in the United Kingdom of the Federation, Authority or Province as may be specified in the rules.

Hence, it is still necessary to examine the legal posi-

tion of both the Secretary of State in Council and the East India Company. These bodies were liable to be sued in respect of matters for which—

(1) private individuals or trading corporations could have been sued;

(2) express statutory provision was made.

No suit would lie against either of them in respect of acts of State or acts of Sovereignty (Salaman *v.* Secretary of State for India in Council (1906), 1 K.B. 613). Sir FitzJames Stephen defined an act of State as "an act injurious to the person or to the property of some person, who is not at the time of that act a subject of Her Majesty; which act is done by a representative of Her Majesty's authority, civil or military, and is either sanctioned or subsequently ratified by Her Majesty" (Stephen's *History of Criminal Law*, vol. 2, p. 61). An act of Sovereignty is an act of the Government in the exercise of its sovereign power. Thus, where the plaintiff had been convicted by a duly constituted court of embezzlement and the making of a false report, he was not permitted to proceed in an action for damages against the Secretary of State in Council in respect of alleged illegality since his conviction was an act of sovereignty (Mata Prasad *v.* Secretary of State for India in Council (1930), I.L.R., 5 Luck. 157). A review of the more important decisions dealing with the liability of the Secretary of State in Council is contained in the judgment of Wallis J. in Ross *v.* Secretary of State for India in Council, as reported in (1914) I.L.R., 37 Mad. 55, at pages 60-66.

It should be noticed, however, that section 176 (1) is expressed to be subject to any other provisions of the

Act. Section 179 (1) provides that where a cause of action arose before the commencement of Part III of the Act, which might have been brought against the Secretary of State in Council, the plaintiff may proceed against the Federation or the Province according to the subject matter of the proceedings, or, at his option, against the Secretary of State.

CHAPTER XIV

TRANSITIONAL ARRANGEMENTS

TRANSITIONAL provisions affecting the Centre are required to bridge the gap between the establishment of Provincial Autonomy and the inauguration of the Federation.

"It is clear, in the first place", stated the Report of the Joint Select Committee, "that it will be necessary to keep in being the existing Central Legislature, composed as at present and elected upon the existing franchise and with the existing number of nominated members, official and non-official; and, in the second place, there should in our opinion be no necessity during the transitory period to alter the composition of, or the method of appointment to, the existing Central Executive. But granted these two premises, it is equally clear that the establishment of Provincial Autonomy will necessitate consequential changes in the powers of both the Central Legislature and Executive, which will differ but little from the changes which will result from the establishment of the Federation."

In Part XIII of the Act are eight sections containing transitional provisions. Among other things they provide that—

1. Executive authority on behalf of His Majesty is to be exercised by the Governor-General in Council (a corporate body exercising corporately

with very narrow exceptions all the functions of the Central Executive).

2. Such provision is not to prevent the Indian Legislature from conferring functions upon subordinate authorities or be deemed to transfer to the Governor-General in Council any functions conferred by any existing Indian law on any court, judge or officer, or on any local or other authority.

3. The Governor-General in Council and the Governor-General shall be under the general control of and comply with such particular directions, if any, as may from time to time be given by the Secretary of State.

4. No sterling loans shall be contracted by the Governor-General in Council, but, if provision is made by an East India Loans Act of the Parliament of the United Kingdom, the Secretary of State may contract such loans on behalf of the Governor-General in Council. Such powers of borrowing are not to be exercised unless at a meeting of the Secretary of State and his Advisers the borrowing has been approved by a majority of the persons present.

5. The powers conferred by the provisions of the Constitution Act on the Federal Legislature shall be exercisable by the Indian Legislature.

6. Notwithstanding the Federation has not yet been established, the Federal Court and the Federal Public Service Commission and the Federal Railway Authority shall come into existence and be known by those names and shall perform in relation to British India the like functions as they are

by or under the Act to perform in relation to the Federation when established.

Further, since the legislative bodies and authorities established by the Act could not at once create a body of law applicable to the Federation and the Provinces, provision had to be made for the transitional period. Section 293 enacts that His Majesty may, by Order in Council, provide that, as from such date as may be specified in the Order, any law in force in British India shall until repealed or amended by a competent Legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of the Act, and, in particular, into accord with the provisions which reconstitute under different names, governments and authorities in India and prescribe the distribution of legislative and executive powers between the Federation and the Provinces. This section, of course, does not authorise His Majesty to make any existing law applicable to a Federated State.

Under the terms of this section the Government of India (Adaptation of Indian Laws) Order 1937 (S.R. & O., 1937, No. 269) was made on 18th March 1937. This Order has appended to it 14 schedules. The first schedule adapts and modifies the Acts of the Central Government, whilst the remaining schedules deal with Provincial Acts and Regulations. A Supplementary Order (S.R. & O., 1937, No. 702) was made on 29th July 1937.

Certain of the provisions of the Government of India Act (a consolidating Act which as reprinted

was amended up to July 1929) relating to the Governor-General, the Commander-in-Chief, the Governor-General's Executive Council and the Indian Legislature, and provisions supplemental to them, are, subject to amendments consequential on the new Act, to continue to have effect. In all, some twenty-nine sections of the Government of India Act will still be operative during the transitory period.

CHAPTER XV

AMENDMENT OF THE ACT

MACHINERY is provided by section 308 for the amendment, in certain specified respects, of the Act or an Order in Council made under it. The amendments referred to are these—

(*a*) Any amendment of the provisions relating to the size or composition of the Chambers of the Federal Legislature, or to the method of choosing or the qualifications of members of that Legislature, not being an amendment which would vary the proportion between the number of seats in the Council of State and the number of seats in the Federal Assembly, or would vary, either as regards the Council of State or the Federal Assembly, the proportion between the number of seats allotted to British India and the number of seats allotted to Indian States.

(*b*) Any amendment of the provisions relating to the number of Chambers in a Provincial Legislature or the size or composition of the Chamber, or of either Chamber, of a Provincial Legislature, or to the method of choosing or the qualifications of members of a Provincial Legislature.

(*c*) Any amendment providing that, in the case of women, literacy shall be substituted for any higher educational standard for the time being required as a qualification for the franchise, or

providing that women, if duly qualified, shall be entered on electoral rolls without any application being made for the purpose by them or on their behalf.

(*d*) Any other amendment of the provisions relating to the qualifications entitling persons to be registered as voters for the purposes of elections.

The procedure indicated as respects proposals for any such amendment is this—

(i) The Federal Legislature or any Provincial Legislature, on motions proposed in each Chamber by a Minister on behalf of the Council of Ministers, may pass a resolution recommending any such amendment.

(ii) The Federal Legislature or any Provincial Legislature, on motions proposed in like manner, may present to the Governor-General or, as the case may be, to the Governor, an address for submission to His Majesty praying that His Majesty may be pleased to communicate the resolution to Parliament.

(iii) If these steps are taken, the Secretary of State shall, within six months after the resolution is so communicated, cause to be laid before both Houses of Parliament a statement of any action which it may be proposed to take thereon.

The Governor-General or the Governor, as the case may be, when forwarding any such resolution and address to the Secretary of State, is to transmit therewith a statement of his opinion as to the proposed

amendment, and, in particular, as to the effect which it would have on the interests of any minority together with a report as to the views of any minority likely to be affected. The Secretary of State is to cause such statement to be laid before Parliament. In performing these duties the Governor-General or the Governor, as the case may be, is to act in his discretion.

As regards any such amendment as is mentioned in paragraph (*c*) above—that is to say, respecting women and the franchise—the procedure indicated is to apply to a resolution of a Provincial Legislature whenever passed. Subject to that, it is not to apply to any resolution passed before the expiration of ten years, in the case of a resolution of the Federal Legislature, from the establishment of the Federation, and, in the case of a resolution of a Provincial Legislature, from the establishment of Provincial Autonomy.

On the other hand, His Majesty in Council may at any time, whether the ten years referred to have elapsed or not, and whether any address as before mentioned has been submitted or not, make in the provisions of the Act any such amendment. It is provided, however, that if no such address has been submitted, then before the draft of any Order which it is proposed to submit to His Majesty is laid before Parliament the Secretary of State shall, unless it appears to him that the proposed amendment is of a minor or drafting nature, take such steps as His Majesty may direct for ascertaining the views of the Governments, Legislatures and minorities in India which would be affected by it. Further, the provisions of Part II of the First Schedule to the Act—which deals with representatives of Indian States in respect of the Federal Legislature—are not to be amended without the

consent of the Ruler of any State which will be affected by the amendment.

In a statement issued by the Government of India on 3rd July 1935, on the authority of His Majesty's Government, it was pointed out that the necessity for the powers referred to in the preceding paragraph was due to such reasons as the following—

"(*a*) It is impossible to foresee when necessity may arise for amending minor details connected with the franchise and the constitution of the Legislatures, and for such amendment it would clearly be disadvantageous to have no method available short of a fresh amending Act of Parliament; nor is it practicable statutorily to separate out such detail from more important matters such as those covered by the terms of the Communal Award.

(*b*) It might also become desirable, in the event of a unanimous agreement between communities in India, to make modifications in the provisions based upon the Communal Award, and for such agreed changes it would also be disadvantageous to have no other method available than an amending Act of Parliament."

The statement added that within the range of the Communal Award His Majesty's Government would not propose, in the exercise of any powers conferred by this clause, to recommend to Parliament any changes, unless such changes had been agreed between the communities concerned.

Section 309 sets out the procedure to be followed in respect of Orders in Council. It provides that the Secretary of State shall lay before Parliament the draft of

any Order which it is proposed to recommend His Majesty to make, and no further proceedings shall be taken in relation to it except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Order may be made either in the form of the draft, or with such amendments as may have been agreed to by resolution of both Houses.

But if at any time when Parliament is dissolved or prorogued, or when both Houses of Parliament are adjourned for more than fourteen days, the Secretary of State is of opinion that on account of urgency an Order in Council should be made under the Act forthwith, it will not be necessary for a draft of the Order to be laid before Parliament. In such a case, however, the Order will cease to have effect at the expiration of twenty-eight days from the date on which the House of Commons first sits after the making of the Order unless within that period resolutions approving the making of the Order are passed by both Houses of Parliament.

The type of amendment which the Act envisages may be properly made by Order in Council is illustrated by the Government of India (Federal Legislative Amendment) Order 1936 (S.R. & O., 1936, No. 1324), which provides that the State of Khaniadhana shall be included in the Central India Agency.

The Statute of Westminster

It is of course clear that the Act itself can be amended only by Parliament. The Statute of Westminister 1931 (22 Geo. V, c. 4) has no application to India. That Statute applies solely to the Dominion of Canada, the Common-

wealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland.

Finally it is to be observed that little now remains of the statutes previously affecting the government of India. The extent to which they have been repealed is shown by the tenth schedule to the Act.

APPENDIX

I

DRAFT INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR-GENERAL AND INSTRUMENTS OF INSTRUCTIONS TO GOVERNORS

UNDER sections 13 and 53 of the Act, the Secretary of State is to lay before Parliament the draft of any Instructions (including any Instructions amending or revoking Instructions previously issued) which it is proposed to recommend His Majesty to issue to the Governor-General or the Governors.

The following draft Instrument of Instructions to the Governor-General was presented to Parliament in February 1935 (Cmd. 4805) by the Secretary of State for India as illustrating the contents of this document which the Government had in mind. The draft is based in the main on recommendations of the Joint Select Committee, and also contains some passages and phrases (for example in paragraph XXXI) which have been used in the past in Instructions to the Governor-General and Governors.

INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR-GENERAL

WHEREAS by Letters Patent bearing even date We have made effectual and permanent provision for the Office of Governor-General of India:

AND WHEREAS by those Letters Patent and by the Act of Parliament passed on [2nd August 1935] and entitled the Government of India Act, 1935 (hereinafter called "the said Act"), certain powers, functions and authority for the government of India and of Our Federation of India are declared to be vested in the Governor-General as Our Representative:

AND WHEREAS, without prejudice to the provision in the said Act that in certain regards therein specified the Governor-General shall act according to instructions received from time to time from Our Secretary of State, and to the duty of Our Governor-General to give effect to any instructions so received, We are minded to make general provision regarding the manner in which Our said Governor-General shall execute all things which, according to the said Act and said Letters Patent, belong to his Office and to the trust which We have reposed in him:

AND WHEREAS by the said Act it is provided that the draft of any such Instructions to be issued to Our Governor-General shall be laid by Our Secretary of State before both Houses of Parliament:

AND WHEREAS both Houses of Parliament, having considered the draft laid before them accordingly, have presented to Us an Address praying that Instructions may be issued to Our Governor-General in the form which hereinafter follows:

NOW THEREFORE We do by these Our Instructions under Our Sign Manual and Signet declare Our pleasure to be as follows:—

A.—INTRODUCTORY

I. Under these Our Instructions, unless the context otherwise require, the term "Governor-General" shall include every person for the time being administering the Office of Governor-General according to the provisions of Our Letters Patent constituting the said Office.

II. Our Governor-General for the time being shall, with all due solemnity, cause Our Commission under Our Sign Manual, appointing him, to be read and published in the presence of the Chief Justice of India for the time being, or, in his absence, other Judge of the Federal Court.

III. Our said Governor-General shall take the oath of allegiance and the oath for the due execution of the Office of our Governor-General of India, and for the due and impartial administration of justice, in the form hereto appended, which oaths the Chief Justice of India for the time being, or in his absence any Judge of the Federal Court, shall, and is hereby required to, tender and administer unto him.

IV. And We do authorise and require Our Governor-General, by himself or by any other person to be authorised by him in that behalf, to administer to every person appointed by him to hold office as a member of the Council of Ministers the oaths of office and of secrecy hereto appended.

V. And We do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. And whereas great prejudice may happen to Our service and to the security of India by the absence of Our Governor-General, he shall not quit India during his term of office without having first obtained leave from Us under Our Sign Manual or through one of Our Principal Secretaries of State.

B.—In Regard to the Executive Authority of the Federation

VII. Our Governor-General shall do all that in him lies to maintain standards of good administration; to encourage religious toleration, co-operation and goodwill among all classes and creeds; and to promote all measures making for moral, social and economic welfare.

VIII. In making appointments to his Council of Ministers Our Governor-General shall use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who, in his judgment, is most likely to command a stable majority in the Legislature, to appoint those persons (including so far as practicable representatives of the Federated States and members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

IX. In all matters within the scope of the executive authority of the Federation, save in respect of those functions which he is required by the said Act to exercise in his discretion, our Governor-General shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the said Act committed to him, or with the proper discharge of any of the functions which he is otherwise by the said Act required to exercise on his individual judgment; in any of which cases our Governor-General shall, notwithstanding his Ministers' advice, act in exercise of the powers by the said Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

X. It is Our will and pleasure that in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federation Our Governor-General shall in particular make it his duty to see that a budgetary or borrowing policy is not pursued which would, in his judgment, seriously prejudice the credit of India in the money markets of the world, or affect the capacity of the Federation duly to discharge its financial obligations.

XI. Our Governor-General shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Federal Legislature, and those classes who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare on joint political action in the Federal Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor-General shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and he shall be guided in this regard by the accepted policy prevailing before the issue of these Our Instructions, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public.

XII. In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the said Act and the safeguarding of their legitimate interests Our Governor-General shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the said Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.

XIII. The special responsibility of Our Governor-General for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V [which deals with discrimination] of the said Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though

the advice so tendered to him is not in conflict with any specific provision of the said Act.

XIV. In the discharge of his special responsibility for the prevention of measures which would subject goods of United Kingdom origin imported into India to discriminatory or penal treatment, Our Governor-General shall avoid action which would affect the competence of his Government and of the Federal Legislature to develop their own fiscal and economic policy, or would restrict their freedom to negotiate trade agreements whether with the United Kingdom or with other countries for the securing of mutual tariff concessions; and he should intervene in tariff policy or in the negotiation of tariff agreements only if, in his opinion, the main intention of the policy contemplated is, by trade restrictions, to injure the interests of the United Kingdom rather than to further the economic interests of India. And we require and charge him to regard the discriminatory or penal treatment covered by this special responsibility as including both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions on imports) and indirect discrimination by means of differential treatment of various types of products: and Our Governor-General's special responsibility extends to preventing the imposition of prohibitory tariffs or restrictions, if he is satisfied that such measures are proposed with the aforesaid intention. It also extends, subject to the aforesaid intention, to measures which, though not discriminatory or penal in form, would be so in fact.

At the same time in interpreting the special responsibility to which this paragraph relates Our Governor-General shall bear always in mind the partnership between India and the United Kingdom within Our Empire which has so long subsisted and the mutual obligations which arise therefrom.

XV. Our Governor-General shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers, and no Bill of the Federal Legislature shall become law, which would imperil the economic life of any

State, or affect prejudicially any right of any State heretofore or hereafter recognised,[1] whether derived from treaty, grant, usage, sufferance or otherwise, not being a right appertaining to a matter in respect to which, in virtue of the Ruler's Instrument of Accession, the Federal Legislature may make laws for his State and his subjects.

XVI. In the framing of rules for the regulation of the business of the Federal Government Our Governor-General shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Minister in charge of the Finance Department shall be consulted upon any proposal by any other Minister which affects the finances of the Federation: and further that no reappropriation within a Grant shall be made by any Minister otherwise than after consultation with the Finance Minister; and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers.

XVII. Although it is provided in the said Act that the Governor-General shall exercise his functions in part in his discretion and in part with the aid and advice of Ministers, nevertheless it is Our will and pleasure that Our Governor-General shall encourage the practice of joint consultation between himself, his Counsellors and his Ministers. And seeing that the Defence of India must to an increasing extent be the concern of the Indian people it is Our will in especial that Our Governor-General should have regard to this instruction in his administration of the Department of Defence; and notably that he shall bear in mind the desirability of ascertaining the views of his Ministers when he shall have occasion to consider matters relating to the general policy of appointing Indian officers to Our Indian Forces, or the employment of Our Indian Forces on service outside India.

XVIII. Further, it is Our will and pleasure that, in the

[1] The procedure for the determination of the right in case of a dispute rests with the Crown's representative for the conduct of relations with the States.

administration of the Department of Defence, Our Governor-General shall obtain the views of Our Commander-in-Chief on any matter which will affect the discharge of the latter's duties, and shall transmit his opinion on such matters to Our Secretary of State whenever the Commander-in-Chief may so request on any occasion when Our Governor-General communicates with Our Secretary of State upon them.

XIX. And We desire that, although the financial control of Defence administration must be exercised by the Governor-General at his discretion, nevertheless the Federal Department of Finance shall be kept in close touch with this control by such arrangement as may prove feasible, and that the Federal Ministry and, in particular, the Finance Minister shall be brought into consultation before estimates of proposed expenditure for the service of Defence are settled and laid before the Federal Legislature.

C.—In regard to Relations between the Federation, Provinces and Federated States

XX. Whereas it is expedient, for the common good of Provinces and Federated States alike, that the authority of the Federal Government and Legislature in those matters which are by law assigned to them should prevail:

And whereas at the same time it is the purpose of the said Act that on the one hand the Governments and Legislatures of the Provinces should be free in their own sphere to pursue their own policies, and on the other hand that the sovereignty of the Federated States should remain unaffected save in so far as the Rulers thereof have otherwise agreed by their Instruments of Accession:

And whereas in the interest of the harmonious co-operation of the several members of the body politic the said Act has empowered Our Governor-General to exercise at his discretion certain powers affecting the relations between the Federation and Provinces and States:

It is Our will and pleasure that Our Governor-General, in the exercise of these powers, should give unbiased considera-

tion as well to the views of the Governments of Provinces and Federated States as to those of his own Ministers, whenever those views are in conflict and, in particular, when it falls to him to exercise his power to issue orders to the Governor of a Province, or directions to the Ruler of a Federated State, for the purpose of securing that the executive authority of the Federation is not impeded or prejudiced, or his power to determine whether provincial law or federal law shall regulate a matter in the sphere in which both Legislatures have power to make laws.

XXI. It is Our desire that Our Governor-General shall by all reasonable means encourage consultation with a view to common action between the Federation, Provinces and Federated States. It is further Our will and pleasure that Our Governor-General shall endeavour to secure the co-operation of the Governments of Provinces and Federated States in the maintenance of such federal agencies and institutions for research as may serve to assist the conduct by Provincial Governments and Federated States of their own affairs.

XXII. In particular We require Our Governor-General to ascertain by the method which appears to him best suited to the circumstances of each case the views of Provinces and of Federated States upon any legislative proposals which it is proposed to introduce in the Federal Legislature for the imposition of taxes in which Provinces or Federated States are interested.

XXIII. Before granting his previous sanction to the introduction of a Bill into the Federal Legislature imposing a Federal surcharge on taxes on income, Our Governor-General shall satisfy himself that the results of all practicable economies and of all practicable measures for increasing the yield accruing to the Federation from other sources of taxation within the powers of the Federal Legislature would be inadequate to balance Federal receipts and expenditure on revenue account; and among the aforesaid measures shall be included the exercise of any powers vested in him in relation to the amount of the sum retained by the Federation

out of moneys assigned to the Provinces from taxes on income.

XXIV. Our Governor-General, in determining whether the Federation would or would not be justified in refusing to make a loan to a Province, or to give a guarantee in respect of a loan to be raised by a Province, or in imposing any conditions in relation to such a loan or guarantee, shall be guided by the general policy of the Federation for the time being as to the extent to which it is desirable that borrowings on behalf of the Provinces should be undertaken by the Federation; but such general policy shall not in any event be deemed to prevail against the grant by the Federation of a loan to a Province or a guarantee in respect of a loan to be raised by that Province, if in the opinion of Our Governor-General a temporary financial emergency of a grave character has arisen in a Province, in which refusal by the Federation of such a grant or guarantee would leave the Province with no satisfactory means of meeting such temporary emergency.

XXV. Before granting his previous sanction to the introduction into the Federal Legislature of any Bill or amendment wherein it is proposed to authorise the Federal Government to give directions to a Province as to the carrying into execution in that Province of any Act of the Federal Legislature relating to a matter specified in Part II of the Concurrent Legislative List appended to the said Act, it is Our will and pleasure that Our Governor-General should take care to see that the Governments of the Provinces which would be affected by any such measure have been duly consulted upon the proposal, and upon any other proposals which may be contained in any such measure for the imposition of expenditure upon the revenues of the Provinces.

XXVI. In considering whether he shall give his assent to any Provincial law relating to a matter enumerated in the Concurrent Legislative List, which has been reserved for his consideration on the ground that it contains provisions repugnant to the provisions of a Federal law, Our Governor-

General, while giving full consideration to the proposals of the Provincial Legislature, shall have due regard to the importance of preserving substantially the broad principles of those Codes of law through which uniformity of legislation has hitherto been secured.

D.—Matters affecting the Legislature

XXVII. Our Governor-General shall not assent in Our name to, but shall reserve for the signification of Our pleasure, any Bill of any of the classes herein specified, that is to say:—

(*a*) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;

(*b*) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court of any Province as to endanger the position which these Courts are by the said Act designed to fill;

(*c*) any Bill passed by a Provincial Legislature and reserved for his consideration which would alter the character of the Permanent Settlement;

(*d*) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III, Part V of the said Act [which deals with discrimination].

[In the House of Lords on 18th July 1935 the Marquess of Zetland (without wishing to bind himself to the actual words) said that at the end of paragraph XXVII he would propose to insert some such words as these—

"In considering whether or not he shall assent in Our name to any Bill other than a Bill of any of the classes enumerated in the foregoing sub-paragraphs Our Governor-General [and in the case of a Province Our Governor] shall without prejudice to his power to withhold his assent upon any ground whatsoever have special regard to the effect of the Bill upon any of his special responsibilities."]

XXVIII. It is further Our will and pleasure that if an Agreement is made with His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the said Act [the establishment of Provincial Autonomy], Our Governor-General in notifying his assent in Our name to any Act of the Legislature of the Central Provinces and Berar which has been reserved for his consideration, shall declare that his assent to the Act in its application to Berar has been given on Our behalf and in virtue of the provisions of Part III of the said Act in pursuance of the Agreement between Us and His Exalted Highness the Nizam. [See p. 228.]

XXIX. It is Our will that the power vested by the said Act in Our Governor-General to stay proceedings upon a Bill, clause or amendment in the Federal Legislature in the discharge of his special responsibility for the prevention of grave menace to peace and tranquillity shall not be exercised unless, in his judgment, the public discussion of the Bill, clause or amendment would itself endanger peace and tranquillity.

XXX. It is Our will and pleasure that, in choosing representatives of British India for the seats in the Council of State which are to be filled by Our Governor-General by nominations made in his discretion, he shall, so far as may be, redress inequalities of representation which may have resulted from election. He shall, in particular, bear in mind the necessity of securing representation for the Scheduled Castes and women; and in any nominations made for the purpose of redressing inequalities in relation to minority communities (not being communities to whom seats are specifically allotted in the Table in the First Part of the First Schedule to the said Act) he shall, so far as may seem to him just, be guided by the proportion of seats allotted to such minority communities among the British India representatives of the Federal Assembly.

E.—General

XXXI. And finally, it is Our will and pleasure that Our Governor-General should so exercise the trust which we have

reposed in him that the partnership between India and the United Kingdom within Our Empire may be furthered, to the end that India may attain its due place among Our Dominions.

INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR

The following Draft Instrument of Instructions which the Government proposed, with the consent of Parliament, to recommend His Majesty to issue to the Governors of Indian Provinces was presented to Parliament on 3rd November 1936. It was approved by Parliament in December 1936, and took effect on 1st April 1937—the date of the establishment of Provincial Autonomy.

DRAFT INSTRUMENT OF INSTRUCTIONS TO THE GOVERNORS OF MADRAS, BOMBAY, BENGAL, THE UNITED PROVINCES, THE PUNJAB, BIHAR, THE CENTRAL PROVINCES AND BERAR, ASSAM, THE NORTH-WEST FRONTIER PROVINCE, ORISSA, AND SIND

WHEREAS by Letters Patent bearing date the day of Nineteen hundred and thirty-seven We have made permanent provision for the Office of Governor of :

AND WHEREAS by those Letters Patent and by the Act of Parliament passed on the second day of August, Nineteen hundred and thirty-five and entitled the Government of India Act 1935 (hereinafter called "the Act"), certain powers, functions and authority for the government of the Province of are declared to be vested in the Governor as Our Representative:

AND WHEREAS, without prejudice to the provision in the Act that in certain regards therein specified the Governor shall act according to instructions received from time to time from Our Governor-General, and to the duty of Our

Governor to give effect to instructions so received, We are minded to make general provision regarding the due manner in which Our said Governor shall execute all things which, according to the Act and the said Letters Patent, belong to his Office, and to the trust which We have reposed in him:

AND WHEREAS a draft of these Instructions has been laid before Parliament in accordance with the provisions of subsection (1) of section fifty-three of the Act and an Address has been presented to Us by both Houses of Parliament praying that instructions may be issued in the terms of these Instructions:

NOW THEREFORE We do by these Our Instructions under Our Sign Manual and Signet declare Our pleasure to be as follows:—

A.—INTRODUCTORY

I. Under these Our Instructions, unless the context otherwise require, the term "Governor" shall include every person for the time being acting as Governor according to the provisions of the Act.

II. Our Governor for the time being shall, with all due solemnity, cause Our Commission under Our Sign Manual appointing him to be read and published in the presence of the Chief Justice for the time being, or, in his absence, other Judge, of the High Court of the Province.

III. Our said Governor shall take the oath of allegiance and the oath for the due execution of the Office of Our Governor of , and for the due and impartial administration of justice, in the form hereto appended, which oaths the Chief Justice for the time being, or in his absence any Judge, of the High Court, shall, and he is hereby required to, tender and administer unto him.

IV. And We do authorise and require Our Governor, by himself or by any other person to be authorised by him in that behalf, to administer to every person appointed by him to hold office as a member of the Council of Ministers the oaths of office and of secrecy hereto appended.

V. And We do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. And whereas great prejudice may happen to Our service by the absence of Our Governor, he shall not quit India during his term of office without having first obtained leave from Us under Our Sign Manual or through one of Our Principal Secretaries of State.

B.—In regard to the Executive Authority of the Province

VII. In making appointments to his Council of Ministers Our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the Legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

VIII. In all matters within the scope of the executive authority of the Province, save in relation to functions which he is required by or under the Act to exercise in his discretion, Our Governor shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the Act committed to him, or with the proper discharge of any of the functions which he is otherwise by or under the Act required to exercise in his individual judgment; in any of which cases Our Governor shall, notwithstanding his Ministers' advice, act in exercise of the powers by or under the Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But

he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

IX. Our Governor shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Legislature, and those classes of the people committed to his charge who, whether on account of the smallness of their number or their primitive condition or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare upon joint political action in the Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and, so far as there may be in his Province at the date of the issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public.

X. In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the Act and the safeguarding of their legitimate interests Our Governor shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.

XI. The special responsibility of Our Governor for securing in the sphere of executive action any of the purposes

which the provisions of Chapter III of Part V of the Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the Act.

XII. Our Governor shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised, whether derived from treaty, grant, usage, sufferance or otherwise: and he shall refer to Our Governor-General any questions which may arise as to the existence of any such right.

XIIA. In pursuance of the Agreement made between Us and His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the Act, Our Governor shall interpret his special responsibility for the protection of the rights of any Indian State as also requiring him in the administration of Berar to have due regard to the commercial and economic interests of the State of Hyderabad.

Further, if Our Governor is at any time of opinion that the policy hitherto in force affords to him no satisfactory guidance in the interpretation of his special responsibility for securing that a reasonable share of the revenues of his Province is expended in or for the benefit of Berar he shall, if he deems it expedient, fortify himself with advice from a body of experienced and unbiased persons whom he may appoint for the purpose of recommending what changes in policy would be suitable and equitable.

(*The foregoing paragraph will be included in the Instrument of Instructions to the Governor of the Central Provinces and Berar only.*)

XIII. In the framing of rules for the regulation of the business of the Provincial Government Our Governor shall ensure that, amongst other provisions for the effective dis-

charge of that business, due provision is made that the Finance Minister shall be consulted upon any proposal by any other Minister which affects the finances of the Province: and further that no reappropriation within a Grant shall be made by any Department other than the Finance Department, except in accordance with such rules as the Finance Minister may approve; and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers.

He shall further in those rules make due provision to secure that prompt attention is paid to any representation received by his Government from any minority.

XIV. Having regard to the powers conferred by the Act upon Our Secretary of State to appoint persons to Our service if, in his opinion, circumstances arise which render it necessary for him so to do in order to secure efficiency in irrigation, Our Governor shall make it his care to see that he is kept constantly supplied with information as to the conduct of irrigation in his Province in order that he may, if need be, place this information at the disposal of Our Governor-General.

XV. In the exercise of the powers by law conferred upon him in relation to the administration of areas declared under the Act to be Excluded or Partially Excluded Areas, or to the discharge of his special responsibility for the safeguarding of the legitimate interests of minorities, Our Governor shall, if he thinks this course would enable him the better to discharge his duties to the inhabitants of those areas or to primitive sections of the population elsewhere, appoint an officer with the duty of bringing their needs to his notice and advising him regarding measures for their welfare.

XVA. Our Governor shall bear constantly in mind the danger to India as a whole of any failure to maintain peace and security on the North-West Frontier. He shall, therefore, in the exercise of the executive authority of the Province, constantly have regard to the due discharge of his functions as Agent to Our Governor-General in respect of

the tribal areas situate between the frontiers of India and the North-West Frontier Province; and he shall not hesitate to exercise his special responsibility for securing that the due discharge of his functions in respect of such tribal areas is not prejudiced or impeded by any course of action taken with respect to any other matter.

(*The foregoing paragraph will be included in the Instructions to the Governor of the North-West Frontier Province only.*)

C.—Matters affecting the Legislature

XVI. In determining whether he shall in Our name give his assent to, or withhold his assent from, any Bill Our Governor shall, without prejudice to the generality of his power to withhold his assent on any ground which appears to him in his discretion to render such action necessary or expedient, have particular regard to the bearing of the provisions of the Bill upon any of the special responsibilities imposed upon him by the Act.

XVII. Without prejudice to the generality of his powers as to reservation of Bills, Our Governor shall not assent in Our name to, but shall reserve for the consideration of Our Governor-General, any Bill of any of the classes herein specified, that is to say:—

(*a*) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;

(*b*) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Act designed to fill;

(*c*) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III of Part V or section 299 of the Act;

(*d*) any Bill which would alter the character of the Permanent Settlement.

And in view of the provisions in this clause of these Our Instructions, it is Our will and pleasure that if his previous sanction is required under the Act to the introduction of any Bill of the last-mentioned description Our Governor shall not withhold that sanction to the introduction of the Bill.

XVIIA. Our Governor in declaring his assent in Our name to any Bill of the Legislature of the Central Provinces and Berar applying to Berar or in notifying Our assent to any such Bill reserved for the signification of Our pleasure shall state that the assent to the Bill in its application to Berar has been given by virtue of the assent of His Exalted Highness the Nizam to the aforesaid Agreement.

(*The foregoing paragraph will be included in the Instructions to the Governor of the Central Provinces and Berar only.*)

XVIII. It is Our will that the power vested by the Act in Our Governor to stay proceedings upon a Bill, clause or amendment in the Provincial Legislature in the discharge of his special responsibility for the prevention of grave menace to peace and tranquillity shall not be exercised unless, in his judgment, the public discussion of the Bill, clause or amendment would itself endanger peace and tranquillity.

XIX. It is Our will and pleasure that the seats in the Legislative Council to be filled by the nomination of Our Governor shall be so apportioned as in general to redress, so far as may be, inequalities of representation which may have resulted from election, and in particular to secure representation for women and the Scheduled Castes in that Chamber.

D.—General

XX. And generally Our Governor shall do all that in him lies to maintain standards of good administration; to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the

Province; and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments; and he shall further have regard to this Instruction in the exercise of the powers by law conferred upon him in relation to matters whether of legislation or of executive government.

XXI. And We do hereby charge Our Governor to communicate these Our Instructions to his Ministers and to publish the same in his Province in such manner as he may think fit.

APPENDIX

Form of Oath of Allegiance

I, , do swear that I will be faithful and bear true allegiance to His Majesty King George the Sixth, Emperor of India, His Heirs and Successors, according to law.

So help me God.

Form of Oath of Office

I, , do swear that I will well and truly serve Our Sovereign, King George the Sixth, Emperor of India, in the Office of , and that I will do right to all manner of people after the laws and usages of India, without fear or favour, affection or ill-will.

So help me God.

Form of Oath of Secrecy for Ministers

I, , do swear that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration, or shall become known to me as a Minister in , except as may be required for the due discharge of my duties as such Minister or as may

be specially permitted by the Governor in the case of any matter pertaining to the functions to be exercised by him in his discretion.

So help me God.

II

TABLES OF SEATS

1. *The Council of State*

Representatives of British India

1 Province or Community	2 Total Seats	3 General Seats	4 Seats for Scheduled Castes	5 Sikh Seats	6 Muhammadan Seats	7 Women's Seats
Madras . . .	20	14	1	..	4	1
Bombay . .	16	10	1	..	4	1
Bengal . . .	20	8	1	..	10	1
United Provinces .	20	11	1	..	7	1
Punjab . . .	16	3	..	4	8	1
Bihar . . .	16	10	1	..	4	1
Central Provinces and Berar	8	6	1	..	1	..
Assam . . .	5	3	..	..	2	..
North-West Frontier Province	5	1	..	..	4	..
Orissa . . .	5	4	..	..	1	..
Sind . . .	5	2	..	..	3	..
British Baluchistan	1	..	..	..	1	..
Delhi . . .	1	1	..	..	..	..
Ajmer-Merwara .	1	1	..	..	..	..
Coorg . . .	1	1	..	..	..	..
Anglo-Indians .	1	..	..	..	..	..
Europeans . .	7	..	..	..	..	..
Indian Christians .	2	..	..	..	..	..
Totals . .	150	75	6	4	49	6

2. *The Federal Assembly*

Representatives of British India

1	2	3	4	5	6	7	8	9	10	11	12	13
Province	Total Seats	General Seats		Sikh Seats	Muhammadan Seats	Anglo-Indian Seats	European Seats	Indian Christian Seats	Seats for Representatives of Commerce and Industry	Landholders' Seats	Seats for Representatives of Labour	Women's Seats
		Total of General Seats	General Seats reserved for Scheduled Castes									
Madras	37	19	4	..	8	1	1	2	2	1	1	2
Bombay	30	13	2	..	6	1	1	1	3	1	2	2
Bengal	37	10	3	..	17	1	1	1	3	1	2	1
United Provinces	37	19	3	..	12	1	1	1	..	1	1	1
Punjab	30	6	1	6	14	..	1	1	..	1	..	1
Bihar	30	16	2	..	9	..	1	1	..	1	1	1
Central Provinces and Berar	15	9	2	..	3	..	..	..	..	1	1	1
Assam	10	4	1	..	3	..	1	1	..	..	1	..
North-West Frontier Province	5	1	..	..	4	..	..	..	..	..	..	..
Orissa	5	4	1	..	1	..	..	..	..	..	..	..
Sind	5	1	..	..	3	..	1	..	..	..	..	..
British Baluchistan	1	..	..	..	1	..	..	..	..	..	..	..
Delhi	2	1	..	..	1	..	..	..	..	..	..	..
Ajmer-Merwara	1	1	..	..	..	..	..	..	..	..	..	..
Coorg	1	1	..	..	..	..	..	..	..	..	..	..
Non-Provincial Seats	4	..	..	..	..	..	..	..	3	..	1	..
Totals	250	105	19	6	82	4	8	8	11	7	10	9

3. *Provincial Legislative Assemblies*

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
Province	Total Seats	General Seats		Seats for Representatives of backward Areas and Tribes	Sikh Seats	Muhammadan Seats	Anglo-Indian Seats	European Seats	Indian Christian Seats	Seats for Representatives of Commerce, Industry, Mining and Planting	Landholders' Seats	University Seats	Seats for Representatives of Labour	Seats for Women				
		Total of General Seats	General Seats reserved for Scheduled Castes											General	Sikh	Muhammadan	Anglo-Indian	Indian Christian
Madras . .	215	146	30	1	..	28	2	3	8	6	6	1	6	6	..	1	..	1
Bombay . .	175	114	15	1	..	29	3	3	3	7	2	1	7	5	..	1	..	..
Bengal . .	250	78	30	..	..	117	3	11	2	19	5	2	8	2	..	2	1	..
United Provinces	228	140	20	..	..	64	1	2	2	3	6	1	3	4	..	2	..	..
Punjab . .	175	42	8	..	31	84	1	1	2	1	5	1	3	1	1	2	..	..
Bihar . .	152	86	15	7	..	39	1	2	1	4	4	1	3	3	..	1	..	..
Central Provinces and Berar	112	84	20	1	..	14	1	1	..	2	3	1	2	3	..	..	..	..
Assam . .	108	47	7	9	..	34	..	1	1	11	2	..	4	1	..	..	..	..
North - Western Frontier Province	50	9	..	..	3	36	..	..	..	..	..	..	..	..	..	..	..	..
Orissa . .	60	44	6	5	..	4	..	..	1	1	2	..	1	2	..	..	..	..
Sind . . .	60	18	..	..	..	33	..	2	..	2	2	..	1	1	..	1	..	..

In Bombay seven of the general seats are to be reserved for Marathas.
In the Punjab one of the Landholders' seats is to be a seat to be filled by a Tumandar.
In Assam and Orissa the seats reserved for women are to be non-communal seats.

4. *Provincial Legislative Councils*

1 Province	2 Total of Seats	3 General Seats	4 Muhammadan Seats	5 European Seats	6 Indian Christian Seats	7 Seats to be filled by Legislative Assembly	8 Seats to be filled by Governor
Madras .	Not less than 54 Not more than 56	35	7	1	3	..	Not less than 8 Not more than 10
Bombay .	Not less than 29 Not more than 30	20	5	1	..	..	Not less than 3 Not more than 4
Bengal .	Not less than 63 Not more than 65	10	17	3	..	27	Not less than 6 Not more than 8
United Provinces	Not less than 58 Not more than 60	34	17	1	..	..	Not less than 6 Not more than 8
Bihar .	Not less than 29 Not more than 30	9	4	1	..	12	Not less than 3 Not more than 4
Assam .	Not less than 21 Not more than 22	10	6	2	..	..	Not less than 3 Not more than 4

III

LEGISLATIVE LISTS

List I

Federal Legislative List

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment; central intelligence bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

2. Naval, military and air force works; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas.

3. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

6. Public debt of the Federation.

7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication; Post Office Savings Bank.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Federation (not being naval, military or air force works), but as regards property situate in a Province subject always to Provincial legislation, save in so far as Federal law otherwise provides, and as regards property in a Federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India; Federal meteorological organisations.

15. Ancient and historical monuments; archaeological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom; pilgrimages to places beyond India.

18. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

19. Import and export across customs frontiers as defined by the Federal Government.

20. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

23. Fishing and fisheries beyond territorial waters.

24. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.

25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

26. Carriage of passengers and goods by sea or by air.

27. Copyright, inventions, designs, trademarks and merchandise marks.

28. Cheques, bills of exchange, promissory notes and other like instruments.

29. Arms; firearms; ammunition.

30. Explosives.

31. Opium so far as regards cultivation and manufacture, or sale for export.

32. Petroleum and other liquids and substances declared

by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

33. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.

34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.

35. Regulation of labour and safety in mines and oilfields.

36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State; Government insurance, except so far as undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be. Extension of the powers and

jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the Federal Legislature; and, to such extent as is expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Inquiries and statistics for the purposes of any of the matters in this list.

44. Duties of customs, including export duties.

45. Duties of excise on tobacco and other goods manufactured or produced in India except—

(*a*) alcoholic liquors for human consumption;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(*c*) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (*b*) of this entry.

46. Corporation tax.

47. Salt.

48. State lotteries.

49. Naturalisation.

50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.

51. Establishment of standards of weight.

52. Ranchi European Mental Hospital.

53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

54. Taxes on income other than agricultural income.

55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

56. Duties in respect of succession to property other than agricultural land.

57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

58. Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights.

59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

List II

Provincial Legislative List

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice; constitution and organisation of all courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.

2. Jurisdiction and powers of all courts except the

Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other units for the use of prisons and other institutions.

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province.

9. Compulsory acquisition of land.

10. Libraries, museums and other similar institutions controlled or financed by the Province.

11. Elections to the Provincial Legislature subject to the provisions of this Act and of any Order in Council made thereunder.

12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof; the salaries, allowances and privileges of the members of the Provincial Legislature; and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature.

13. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

14. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.

15. Pilgrimages, other than pilgrimages to places beyond India.

16. Burials and burial grounds.

17. Education.

18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonisation; Courts of Wards; encumbered and attached estates; treasure trove.

22. Forests.

23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of wild birds and wild animals.

26. Gas and gasworks.

27. Trade and commerce within the Province; markets and fairs; money lending and money lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods; weights and measures.

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

32. Relief of the poor; unemployment.

33. The incorporation, regulation, and winding-up of corporations other than corporations specified in List I; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

34. Charities and charitable institutions; charitable and religious endowments.

35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

36. Betting and gambling.

37. Offences against laws with respect of any of the matters in this list.

38. Inquiries and statistics for the purpose of any of the matters in this list.

39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(*a*) alcoholic liquors for human consumption;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(*c*) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (*b*) of this entry.

41. Taxes on agricultural income.

42. Taxes on lands and buildings, hearths and windows.

43. Duties in respect of succession to agricultural land.

44. Taxes on mineral rights subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.

45. Capitation taxes.

46. Taxes on professions, trades, callings and employments.

47. Taxes on animals and boats.

48. Taxes on the sale of goods and on advertisements.

49. Cesses on the entry of goods into a local area for consumption or sale therein.

50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

52. Dues on passengers and goods carried on inland waterways.

53. Tolls.

54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

List III

Concurrent Legislative List

Part I

1. Criminal law, including all matters included in the Indian Penal code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.

3. Removal of prisoners and accused persons from one unit to another unit.

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce; infants and minors; adoption.

7. Wills, intestacy, and succession, save as regards agricultural land.

8. Transfer of property other than agricultural land; registration of deeds and documents.

9. Trusts and Trustees.

10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land.

11. Arbitration.

12. Bankruptcy and insolvency; administrators-general and official trustees.

13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

14. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II.

15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list.

16. Legal, medical and other professions.

17. Newspapers, books and printing presses.

18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

19. Poisons and dangerous drugs.

20. Mechanically propelled vehicles.

21. Boilers.

22. Prevention of cruelty to animals.

23. European vagrancy; criminal tribes.

24. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

PART II

26. Factories.

27. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.

28. Unemployment insurance.

29. Trade unions; industrial and labour disputes.

30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.

31. Electricity.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on inland waterways.

33. The sanctioning of cinematograph films for exhibition.

34. Persons subjected to preventive detention under Federal authority.

35. Inquiries and statistics for the purpose of any of the matters in this Part of this List.

36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

[*N.B.*—Section 126 (2) provides as follows—

The executive authority of the Federation shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Federal

Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions:

Provided that a Bill or amendment which proposes to authorise the giving of any such directions as aforesaid shall not be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.]

IV

DRAFT INSTRUMENT OF ACCESSION

(This form will require adaptation to certain States with limited powers)

Whereas proposals for the establishment of an Indian Federation, comprising such Indian States as may accede thereto and the Provinces of British India constituted as autonomous Provinces, have been discussed between representatives of His Majesty's Government, of the Parliament of the United Kingdom, of British India and of the Princes and Rulers of the Indian States:

And whereas a Constitution for a Federation of India has been approved by Parliament and embodied in the Government of India Act 1935, but it is by that Act provided that the Federation shall not be established until such date as His Majesty may by proclamation declare:

And whereas the Act cannot apply to any of the territories of *A. B.* save with his consent and concurrence:

And whereas *A. B.*, in the exercise of the sovereignty in and over *X.* in him vested, is desirous of acceding to the said Federation:

1. Now, therefore, *A. B.* hereby declares that, subject to

His Majesty's assent, he accedes to the Federation, and subject always to the terms of this Instrument declares his acceptance of the provisions of the said Act as applicable to his State and to his subjects with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation may exercise in relation to his State and to his subjects such functions as may be vested in them by or under the said Act, in so far as the exercise thereof is not inconsistent with any of the provisions of this Instrument.

2. And *A. B.* hereby declares that he accepts the matters specified in the First Schedule to this Instrument as the matters with respect to which the Federal Legislature shall have power to make laws in relation to his State and to his subjects, but subject in each case to the conditions and limitations, if any, set out in the said Schedule.

3. And *A. B.* hereby declares that he assumes the obligation of ensuring that due effect is given to the provisions of the said Act within the territories of his State, so far as they are applicable therein by virtue of this Instrument.

4. And *A. B.* hereby declares that the privileges and immunities, as defined in Part VII of the said Act [see Section 147 as dealt with in Chapter IX of this book], which are enjoyed by his State, are those specified in the Third Schedule to this Instrument, that the annual values thereof, so far as they are not fluctuating or uncertain, are those specified in the said Schedule, and that he agrees that the values to be attributed to such of them as are fluctuating or uncertain in value shall be determined from time to time in accordance with the provisions of that Schedule.

5. And *A. B.* agrees that this Instrument shall be binding on him as from the date on which His Majesty signifies his acceptance thereof, provided that if the said Federation is not established before the day of

nineteen hundred and thirty , this Instrument shall, on that day, become null and void for all purposes whatsoever.

6. And *A. B.* hereby declares that save as otherwise expressly provided in this Instrument he reserves the sovereignty in and over *X.* in him vested.

7. And *A. B.* hereby declares that he makes these declarations for himself, his heirs and successors, and that accordingly any reference in this Instrument to *A. B.* is to be construed as including a reference to his heirs and successors.

Schedules

Note—The following Article is intended for inclusion in the Instrument only in the case of States in respect of which provision is made in the Instrument for an agreement as contemplated in Section 125 of the Act [which is dealt with in Chapter VIII of this book].

And whereas *A. B.* is desirous that functions in relation to the administration in his State of laws of the Federal Legislature applying therein shall be exercised by himself and by his officers, and the terms of an agreement in that behalf have been mutually agreed between *A. B.* and the Governor-General and are set out in the second Schedule to this Instrument:

Now, therefore, *A. B.* hereby declares that he accedes to the Federation on the assurance that the said Agreement will be executed and the Agreement, when executed, shall be deemed to form part of the Instrument and shall be construed therewith.

N.B.—The Second Schedule to the Act sets out provisions which may be amended without affecting the Accession of a State. Section 6 (5) provides as follows—

> It shall be a term of every Instrument of Accession that the provisions of this Act mentioned in the Second

Schedule thereto may, without affecting the accession of the State, be amended by or by authority of Parliament, but no such amendment shall, unless it is accepted by the Ruler in a supplementary Instrument, be construed as extending the functions which by virtue of the Instrument are exercisable by His Majesty or any Federal authority in relation to the State.

V

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VIII

RULES OF THE FEDERAL COURT

The *Gazette of India* on the 2nd December 1937 contained the following notification relating to the promulgation of the Federal Court Rules:

The Federal Court, in pursuance of the powers conferred on it by Section 214 of the Government of India Act 1935, and of all other powers enabling it in that behalf, with the approval of the Governor-General, hereby makes the following Rules:

PART I

General

ORDER I

INTERPRETATION, ETC.

1. These Rules may be cited as the Federal Court Rules, and shall come into force as soon as they are notified in the *Gazette of India*.

2. In these Rules, unless the context otherwise requires—
"Act" means the Government of India Act 1935;

"Advocate" means a person entitled to appear and plead before the Federal Court;

"Agent" means an Agent admitted and enrolled under these Rules;

"Chief Justice" means the Chief Justice of India;

"Code" means the Civil Procedure Code, 1908, as amended or modified by any Order in Council or by or under any Central Act;

"Court" means the Federal Court;

"decree" and "order" have the same meanings as in the Code;

"Judge" means a Judge of the Court;

"judgment" means the statement given by the Court or a Judge of the grounds of a decree or order;

"month" means a calendar month;

"party" and all words descriptive of parties to proceedings before the Court (as "appellant", "respondent", "plaintiff", "defendant" and the like) include, in respect of all acts proper to be done by an Agent, the Agent of the party in question, when he is represented by an Agent;

"prescribed" means prescribed by rules of the Court;

"Province" includes a Chief Commissioner's Province;

"record" in Part II of these Rules means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence and judgments) proper to be laid before the Court at the hearing of the appeal;

"Registrar" and "Registry" mean respectively the Registrar and Registry of the Court;

"respondent" includes an intervener;

"signed" has the same meaning as in the Code.

3. Where by these Rules or by any order of the Court any step is required to be taken in connection with any cause, matter or appeal before the Court, that step shall, unless the context otherwise requires, be taken in the Registry.

4. Where any particular number of days is prescribed by these Rules, the same shall be reckoned exclusively of the

first day and inclusively of the last day, unless the last day shall happen to fall on a day on which the offices of the Court are closed, in which case the time shall be reckoned exclusively of that day also and of any succeeding day or days on which the offices of the Court continue to be closed.

5. None of the provisions of the Code shall apply to any proceedings in the Court unless expressly incorporated in these Rules.

ORDER II

Documents

1. The officers of the Court shall not receive any pleading, petition, affidavit or other document, except original exhibits and certified copies of public documents, unless it is fairly and legibly transcribed on one side of Government water-marked paper, foolscap size, and all office copies shall be transcribed in like manner.

2. No document in a language other than English shall be accepted for the purpose of any proceedings before the Court, unless translated in accordance with these Rules.

3. Every document required to be translated shall be translated by a translator nominated or approved by the Court.

4. Every translator shall, before acting, make an oath or affirmation that he will translate correctly and accurately all documents given to him for translation.

ORDER III

Affidavits

1. Every affidavit shall be intituled in the cause, matter or appeal in which it is sworn.

2. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs to be numbered consecutively, and shall state the description, occupation, if any, and the true place of abode of the deponent.

3. The costs occasioned by any unnecessary prolixity in the title to an affidavit or otherwise shall be disallowed by the Taxing Officer.

4. An affidavit requiring interpretation to the deponent shall be interpreted by an interpreter nominated or approved by the Court, if made within the Province of Delhi, and if made elsewhere shall be interpreted by a competent person who shall himself make an affidavit that he is a competent person and that he has correctly interpreted the affidavit to the deponent.

5. Affidavits for the purposes of any cause, matter or appeal before the Court may be sworn before any Court or officer mentioned in Section 139 of the Code, or before a commissioner generally or specially authorised in that behalf by the Chief Justice.

6. Where the deponent is a purdahnashin lady she shall be identified by a person to whom she is known and that person shall prove the identification by a separate affidavit.

7. Every exhibit annexed to an affidavit shall be marked with the title and number of the cause, matter or appeal and shall be initialled and dated by the commissioner, court or officer before whom it is sworn.

8. No affidavit having any interlineation, alteration or erasure shall be filed in Court unless the interlineation or alteration is initialled, or unless in the case of an erasure the words or figures written on the erasure are rewritten in the margin and initialled, by the commissioner or officer before whom the affidavit is sworn.

9. The Registrar may refuse to receive an affidavit where in his opinion the interlineations, alterations or erasures are so numerous as to make it expedient that the affidavit should be rewritten.

10. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used except by leave of the Court.

11. In this Order "affidavit" includes a petition or other document required to be sworn and "sworn" shall include "affirmed".

ORDER IV

Inspections, Searches, etc.

1. Subject to the provisions of these Rules, a party to any cause, matter or appeal who has entered an appearance shall be allowed to search, inspect or get copies of all pleadings and other documents or records in the case, on payment of the prescribed fees and charges.

2. The Court, at the request of a person not a party to the cause, matter or appeal, may on good cause shown allow such search or inspection or grant such copies as is or are mentioned in the last preceding Rule, on payment of the prescribed fees and charges.

3. A search or inspection under the last two preceding Rules during the pendency of a cause, matter or appeal, shall be allowed only in the presence, or with the consent, of the parties thereto who have entered an appearance, or after twenty-four hours' notice in writing to them, and copies of documents shall not be allowed to be taken, but notes of the search or inspection may be made.

4. Copies required under any of the preceding Rules of this Order may be certified as correct copies by any officer of the Court authorised in that behalf by the Registrar.

5. No record or document filed in any cause, matter or appeal shall, without the leave of the Court, be taken out of the custody of the Court.

ORDER V

Offices of the Court: Sittings and Vacation, etc.

1. The offices of the Court, except in vacation and on Saturdays and holidays, shall, subject to any order by the Chief Justice, be open daily from 10.30 A.M. to 4.30 P.M., but no work, unless of an urgent nature, shall be admitted after 4 P.M.

2. The offices of the Court shall be open on Saturdays from 10.30 A.M. to 1.30 P.M., but no work, unless of an urgent nature, shall be admitted after 12 noon.

3. The offices of the Court shall be open in vacation from 10.30 A.M. to 1.30 P.M. except on Saturdays and holidays, but no work, unless of an urgent nature, shall be received after 12 noon.

4. The Registrar shall not be absent from the Court without the leave of the Chief Justice, nor any other officer of the Court without the leave of the Registrar, but this Rule shall not apply to Sundays and holidays.

5. The Court shall hold one term annually commencing on the first Tuesday in October in each year, or, if that day is a Court holiday, then on the next working day, and continuing to the commencement of the long vacation in the year next following, and shall sit in Delhi and at such other place or places, if any, as may from time to time be notified in the *Gazette of India*.

6. The long vacation of the Court shall commence on such date as may be fixed in each year by the Chief Justice and notified in the *Gazette of India*.

7. The Court shall not ordinarily sit on Saturdays, nor on the following days, that is to say, 24th December to 6th January, both days inclusive, Good Friday to Easter Monday, both days inclusive, and on any other days notified as Court holidays in the *Gazette of India*.

8. A Judge shall be appointed by the Chief Justice before the commencement of each long vacation for the hearing of all matters which may require to be immediately or promptly dealt with.

ORDER VI

OFFICERS OF THE COURT, ETC.

1. The Registrar shall have the custody of the records of the Court and shall exercise such other functions as are assigned to him by these Rules.

2. Any person appointed by the Chief Justice to be acting Registrar during the absence of the Registrar may exercise all the functions assigned to the Registrar by these Rules, and accordingly any references in these Rules to the Registrar shall include references to an acting Registrar.

3. The Chief Justice may assign, and the Registrar may with the approval of the Chief Justice delegate, to a Deputy Registrar or Assistant Registrar any functions required by these Rules to be exercised by the Registrar.

4. The Registrar shall, subject to any general or special directions given by the Chief Justice, allocate the duties of the Registry among the officers of the Court, and shall, subject to these Rules and to any such directions as aforesaid, supervise and control the officers and servants of the Court.

5. The official Seal to be used in the Court shall be such as the Chief Justice may from time to time direct, and shall be kept in the custody of the Registrar.

6. Subject to any general or special directions given by the Chief Justice, the Seal of the Court shall not be affixed to any writ, rule, order, summons or other process save under the authority in writing of the Registrar.

7. The Seal of the Court shall not be affixed to any certified copy issued by the Court save under the authority in writing of the Registrar or of a Deputy Registrar or Assistant Registrar if authorised in that behalf in writing by the Registrar.

8. The Registrar shall keep a list of all cases pending before the Court and shall, subject to these Rules and to any general or special directions given by the Chief Justice, prepare the list of cases ready for hearing and shall cause public notice to be given thereof and of the day, if any, assigned for the hearing of any case or cases in the list.

ORDER VII

Advocates and Agents

1. A person qualified as hereinafter mentioned may apply to be enrolled as an Advocate in the Court and if his application is granted shall, on payment of the prescribed fee, be entitled to be so enrolled and to appear and plead before the Court.

2. The Roll of Advocates shall be in two parts, one containing the names of Senior Advocates and the other the names of other Advocates.

3. A Senior Advocate shall have precedence over other advocates who are not Senior Advocates, and the provisions of the First Schedule to these rules shall apply with respect to Senior and other Advocates.

4. A person shall not be entitled to be enrolled as an Advocate unless he is, and has been for not less than ten years in the case of a Senior Advocate or five years in case of any other Advocate, enrolled as an Advocate in the High Court of a Province.

5. A person who in the case of an appeal before the Court has appeared as counsel, advocate or vakil in that case in the Court from which the appeal is brought shall be entitled to appear and plead in the appeal, notwithstanding that he has not been enrolled as an Advocate in the Court.

6. The Chief Justice may, if for any special reason he thinks it desirable so to do, permit any other person who is in his opinion sufficiently qualified to appear as an Advocate in a particular case.

7. No person shall appear as Advocate in any case, unless he is instructed by an Agent.

8. The Roll of Advocates shall be kept by the Registrar and shall contain such particulars as the Court may from time to time require.

9. All Advocates appearing before the Court shall wear such robes and costume as may from time to time be directed by the Chief Justice.

10. The enrolment fee for Senior Advocates shall be Rs. 500 and for other Advocates Rs. 250.

11. The Advocate-General of India shall have precedence over all other Advocates in the Court.

12. The Advocates-General of Bengal, Madras, Bombay, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, North-West Frontier Province, Orissa and Sind shall in that order have precedence immediately after the Advocate-General of India.

13. An Advocate-General shall by virtue of his office have the status and precedence of a Senior Advocate in the Federal Court, notwithstanding that his name is not in the list of Senior Advocates.

14. Subject to the preceding rules of this Order, an Advocate appearing before the Court shall have precedence among the Senior or other Advocates, as the case may be, according to the date of his enrolment as a Senior or other Advocate, as the case may be, in the Court:

Provided that an Advocate enrolled before 31st December 1938, shall have precedence among the Senior or other Advocates, as the case may be, according to the date of his enrolment in his own High Court.

Any question which arises with respect to the precedence of any Advocate shall be determined by the Federal Court.

15. A person may apply to be admitted and enrolled as an Agent in the Court if he is entitled to be admitted to practise as an attorney or solicitor in any High Court or if, subject to the next succeeding Rule, he is entitled to appear and plead in a High Court, and if the application is granted shall on payment of the prescribed fee be entitled to be so enrolled.

16. An Agent shall before enrolment subscribe before the

Registrar a declaration, in such form as the Chief Justice may from time to time direct, undertaking to observe the rules, regulations, orders and practice of the Court, to pay all fees or charges due and payable in any cause, matter or appeal in the Court, and not, so long as his name remains on the Roll of Agents, to appear or plead before any High Court.

17. The enrolment fee for an Agent shall be Rs. 100.

18. Every Agent shall have an office in the Province of Delhi and shall notify the Registrar of the address of his office and of any change of address, and any notice, writ, summons or other document served on the Agent at the address notified by him shall be deemed to have been properly served.

19. An Agent who wishes to have his name removed from the Roll of Agents shall apply by petition, verified by affidavit, entitled "In the matter of , an Agent in this Court", and stating the date of his enrolment as an Agent, the reason why he wishes his name to be removed, that no application or other proceeding in any Court is pending against him or is anticipated by him, and that no fees are owing to the Court for which he is personally responsible.

20. Every Agent shall before acting on behalf of any person or party file in the Registry the power or warrant of attorney authorising him to act.

21. No person having an Agent on the record shall file a power or warrant of attorney authorising another Agent to act for him in the same case save with the consent of the former Agent or by leave of a Judge, unless the former Agent is dead, or is unable by reason of infirmity of mind or body to continue to act.

22. No Agent may, without the leave of the Court, withdraw from the conduct of any case by reason only of the non-payment of costs by his client.

23. No person having an Agent on the record shall be heard in person save by special leave of the Court.

24. No Agent shall authorise any person whatsoever, except another Agent, to practise or do any act whatsoever in his name in any case.

25. Where a party changes his Agent, the new Agent shall give notice of the change to all other parties appearing.

26. No Advocate shall act as Agent nor Agent as Advocate in any circumstances whatsoever.

27. Where on the complaint of any person or otherwise, the Court is of opinion that an Advocate has been guilty of misconduct or of conduct unbecoming an Advocate, the Court may suspend him from practising before the Court either permanently or for such period as the Court may think fit, and shall report his name to his own High Court.

28. Where on the complaint of any person or otherwise, the Court is of opinion that an Agent has been guilty of misconduct or has committed a breach of the undertaking subscribed by him, the Court may suspend him from practising before the Court for such period as the Court may determine, or may direct his name to be struck off the roll of Agents, and shall report his name to the High Court or other authority, if any, to which he is subject.

29. For the purpose of the last two preceding Rules the Court shall in the first instance direct a summons to issue returnable before the Court or before a Special Bench to be constituted by the Chief Justice, requiring the Advocate or Agent, as the case may be, to show cause against the matters alleged in the summons, and the summons shall, if possible, be served personally upon him with copies of any affidavit or statement before the Court at the time of the issue of the summons.

ORDER VIII

Business in Chambers

1. The powers of the Court in relation to the following matters may be exercised by the Registrar:

(1) Applications for revivor or substitution;
(2) Applications for leave to appeal or defend as pauper;
(3) Applications for discovery and inspection;
(4) Applications for delivery of Interrogatories;
(5) Certifying of cases as fit for employment of advocate;
(6) Applications for substituted service;
(7) Applications for time to plead, for production of documents and generally relating to conduct of cause, appeal or matter.

2. The powers of the Court in relation to the following matters may be exercised by a single Judge sitting in Chambers but subject to reconsideration, at the instance of any aggrieved party, by a bench of three Judges, which may include the Judge who dealt with the matter:

(1) Approval of Special Translator;
(2) Approval of Special Interpreter;
(3) Applications for production of documents outside Court premises;
(4) Applications for change of Agent;
(5) Applications by Agents for leave to withdraw;
(6) Applications for leave to compromise or discontinue pauper appeals;
(7) Applications for striking out or adding party;
(8) Applications for separate trials of causes of action;
(9) Applications for separate trials to avoid embarrassment;
(10) Rejection of plaint;
(11) Applications for setting down for judgment in default of written statement;
(12) Applications for better statement of claim or defence;
(13) Applications for particulars;
(14) Applications for striking out any matter in a pleading;
(15) Applications for amendment of pleading;
(16) Applications for enlargement of time to amend;
(17) Applications to withdraw suits;
(18) Applications for payment into Court;

(19) Applications for payment out of Court of money or security;
(20) Applications for payment out of Court of interest or dividend on securities;
(21) Applications to tax bills returned by Registrar;
(22) Applications for costs of taxation where one-sixth is taxed off;
(23) Applications for review of taxation by Court;
(24) Applications for enlargement or abridgement of time;
(25) Applications for issue of commission to examine witnesses;
(26) Applications for security for costs;
(27) Applications for assignment of Security Bonds;
(28) Applications for enforcing payment of costs under directions of Registrar;
(29) Applications for extending returnable dates of warrants;
(30) Applications for order against clients for payment of costs;
(31) Applications by outsiders for return of exhibits;
(32) Applications for transmission of original documents to Privy Council;
(33) Applications for taxation and delivery of bills of costs;
(34) Applications under Section 131 (4) of the Act.

3. An appeal shall lie from the Registrar in all cases to the Judge in Chambers.

4. The Registrar may, and if so directed by the Judge in Chambers shall, at any time adjourn any matter to the Judge in Chambers, and the Judge in Chambers may at any time adjourn any matter into Court, and the Court may direct that any matter shall be transferred from the Registrar or the Judge in Chambers to the Court.

PART II

Appellate Jurisdiction

ORDER IX

Civil Appeals

1. Where a certificate has been given under section 205 (1) of the Act, the provisions of Order XLV of the Code, as modified and adapted by the Government of India (Adaptation of Indian Laws) Order, 1937, shall apply in relation to appeals to the Federal Court.

[Order XLV of the Code relates to Appeals to the King in Council.]

2. Subject to the provisions of sections 4 and 12 of the Indian Limitation Act 1908, applications under Rule 2 of the said Order XLV shall be presented within ninety days from the date of the signing of the decree or order appealed from.

[Section 4 of the Indian Limitation Act 1908 provides that where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed the suit, appeal or application may be instituted, preferred or made on the day that the Court reopens. Section 12 provides that in computing the period of limitation prescribed for an appeal an application for leave to appeal and an application for a review of judgment the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed shall be excluded.]

ORDER X

Proceedings after Admission of Appeal

1. After the grant of a certificate by a High Court that a case involves a substantial question of law as to the interpretation of the Act or any Order in Council made thereunder, an appellant shall, subject to the provisions of the

Code and of any rules made by the High Court relating to appeals to the Federal Court, without delay take all necessary steps to have the record prepared in the High Court and transmitted to the Registrar of the Federal Court.

2. The record so prepared shall be printed in such manner as may from time to time be directed by the Federal Court.

3. Within sixty days of the admission of the appeal by the High Court appealed from, the appellant shall lodge in the Federal Court his petition of appeal, which shall contain a concise statement of the facts of the case, of the grounds of appeal, and of the arguments and authorities upon which he proposes to rely at the hearing; and the Registrar shall thereupon send a copy of the petition to that High Court for service upon the respondent or, if the respondent has already entered an appearance, serve a copy upon the respondent.

4. An appellant may withdraw his appeal—

(*a*) at any time before the respondent has entered an appearance, by written notice to the Registrar of the Federal Court; and

(*b*) at any time after the respondent has entered an appearance, by petition to the Federal Court and upon such terms as to costs as the Court may think fit to impose.

5. Any respondent may file in the Registry, not less than fourteen days before the date appointed for the hearing, a concise statement of the facts of the case and of the arguments and authorities upon which he proposes to rely at the hearing; but if he does not do so, he shall not be entitled to be heard by the Court except on the question of costs.

6. The Registrar shall send to the appellant a copy of any statement filed by the respondent.

7. Each party shall lodge or file in the Registry as many copies of his petition of appeal or his statement as the Registrar may direct.

8. A party to an appeal who appears in person shall furnish the Registrar with an address for service, and all documents left at that address, or where service may be affected by post addressed to that address, shall be deemed to have been duly served.

ORDER XI

APPEARANCE

1. A respondent may enter an appearance at any time between the admission and the hearing of the appeal, but if he delays unduly in entering an appearance he shall bear, or be disallowed, the costs occasioned by his delay, unless the Court otherwise orders.

2. A respondent may, after entering appearance, apply for the summary determination of an appeal on the ground that it is frivolous or vexatious or brought for the purpose of delay and the Court shall make such order thereon as it may think fit.

3. Two or more respondents may at their own risk as to costs enter separate appearances in the same appeal.

4. A respondent who has not entered an appearance shall not be entitled to receive any notices relating to the appeal from the Registrar.

5. Where a respondent fails to enter an appearance, the appeal may be set down *ex parte* as against him at any time after the expiration of sixty days from the lodging of the petition of appeal.

6. If a non-appearing respondent has been made a respondent by an order of the Federal Court after the admission of the appeal, the appeal may be set down *ex parte* as against him at any time after the expiration of ninety days from the date on which he was served with a copy of the order of the Court making him a respondent.

ORDER XII

Hearing of Appeals

1. As soon as may be after a petition of appeal has been lodged, the Registrar shall, after communicating with the parties, fix a day for the hearing of the appeal, due regard being had to the current business of the Court, to the time necessary for the service of the petition of appeal on the respondent, and any other relevant circumstances.

2. Subject to the last preceding Rule, all appeals filed in the Registry shall be heard in the order in which they are set down.

3. The Registrar shall, subject to the provisions of Rule 4 of Order XI of these Rules, notify the parties to the appeal of the day fixed for the hearing.

4. Subject to the directions of the Court, at the hearing of an appeal not more than two Advocates shall be heard on a side.

5. The appellant shall not, without the leave of the Court, rely at the hearing on any grounds not specified in his petition of appeal.

6. Where the Court, after hearing an appeal, decides to reserve its judgment therein, the Registrar shall in due course place the appeal in the daily list of the day appointed by the Court for the delivery of the judgment.

7. A respondent may within the time limited for appearance deliver to the Registrar and to the appellant a notice in writing consenting to the appeal, and the Court may thereupon, if it thinks fit, make an order upon the appeal without requiring the attendance of the person so consenting.

ORDER XIII

Failure to prosecute Appeal, etc.

1. If an appellant fails to take any step in an appeal within the time specified by these Rules, or, if no time is specified,

it appears to the Registrar that the appellant is not prosecuting his appeal with due diligence, the Registrar shall call upon him to explain his default, and, if no explanation or no explanation which appears to the Registrar to be sufficient is offered, may issue a summons calling upon him to show cause to the Court why the appeal should not be dismissed for want of prosecution.

2. The Registrar shall send a copy of the summons mentioned in the last preceding Rule to every respondent who has entered an appearance, and every such respondent shall be entitled to be heard before the Court and to ask for his costs and other relief.

3. A petition for an order of revivor or substitution shall be filed in the Federal Court and shall be accompanied by a certificate or duly authenticated statement from the Court appealed from showing who in the opinion of that Court is the proper person to be substituted or entered on the record in place of, or in addition to, a party who has died, or undergone a change of status.

ORDER XIV

Petitions for Special Leave to Appeal

1. Where any person wishes to appeal to the Federal Court on a ground which in the circumstances of the case requires the leave of the Court under Section 205 (2) of the Act, he shall include a prayer for special leave to appeal in his petition of appeal.

2. A prayer for special leave to appeal shall be heard at the same time as the appeal.

ORDER XV

Pauper Appeals

1. Order XLIV in the First Schedule to the Code, and so much of Order XXXIII therein as is applicable, shall apply in the case of any person seeking to appeal to the Federal Court as a pauper, with the substitution of a notice of appeal,

or a petition for special leave to appeal, for a memorandum of appeal, of the Advocate-General of India for the Government Pleader and of the Governor-General in Council for the Provincial Government.

[Order XLIV of the Code relates to pauper appeals and Order XXXIII to suits by paupers.]

2. The Court may allow an appeal to be continued *in forma pauperis* after it has been begun in the ordinary form.

3. An application for permission to proceed as a pauper shall be made on petition, setting out, concisely in separate paragraphs, the facts and relief prayed.

4. The Registrar shall, on satisfying himself that the provisions of Order XXXIII of the Code have been complied with, direct that the petition shall be filed and set down for investigation on a day to be fixed for the purpose.

5. Every decree in a pauper appeal shall contain an order for payment of Court fees mentioned in Rules 10 and 11 of Order XXXIII of the Code.

6. In every pauper appeal the Registrar shall, after the disposal thereof, send to the Governor-General in Council a memorandum of the Court fees due and payable by the pauper.

7. No person shall take, agree to take, or seek to obtain from a person proceeding as a pauper any fee, profit or reward for the conduct of the pauper's business in the Court, but the Court may nevertheless award costs against an adverse party, and in that case may direct payment thereof to the Agent representing the pauper.

8. The preceding Rules of this Order shall apply, with the necessary modifications and adaptations in the case of any person seeking to defend an appeal to the Court as a pauper.

9. No appeal begun or carried on by a pauper appellant or respondent shall be compromised or discontinued without the leave of the Court.

ORDER XVI

Criminal Appeals

1. Where any High Court in British India makes any final order in the exercise of its criminal jurisdiction, whether original, appellate or revisional, and gives such a certificate as is mentioned in Section 205 of the Act, any party in the case may appeal to the Federal Court within thirty days from the date of the order.

2. The provisions of Sections 4 and 12 of the Indian Limitation Act 1908 shall apply in relation to the said period of thirty days as they apply in relation to the periods of limitation prescribed by that Act.

3. The appeal shall be in the form of a petition in writing, which shall be accompanied by a copy of the judgment and order appealed against.

4. The appellant, if he is in jail, may present his petition of appeal and the accompanying documents to the officer in charge of the jail, who shall forward them to the Federal Court.

5. On receipt of the petition, the Registrar shall cause notice to be given to the appellant and to the Advocate-General of India or of the Province concerned, as the case may require, of the date on which the appeal will be heard, and shall, on the application of the said Advocate-General, furnish him with a copy of the grounds of appeal; and in cases where the appeal is by the Crown the Registrar shall cause a like notice to be given to the accused.

6. The Registrar shall then send for the record of the case, if the record is not already in Court, and as soon as possible after the disposal of the appeal he shall send a copy of the Court's judgment or order to the High Court concerned.

7. Pending the disposal of any appeal under these Rules, the Court may order that the execution of the sentence or order appealed against be stayed on such terms as the Court may think fit.

8. The preceding Orders in this Part of these Rules shall, with the necessary modifications and adaptations, apply to criminal appeals.

PART III

Original Jurisdiction

ORDER XVII

Parties to Suits

1. Two or more plaintiffs may join in one suit in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist.

2. Two or more defendants may be joined in one suit against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist.

3. Subject to the provisions of Section 22 of the Indian Limitation Act 1908 the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any plaintiff or defendant improperly joined be struck out, and that the name of any plaintiff or defendant who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

[Section 22 of the Indian Limitation Act 1908 provides that where after the institution of a suit a new plaintiff or defendant is substituted or added the suit shall as regards him be deemed to have been instituted when he was so made a party. This does not apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.]

4. Where it appears to the Court that any causes of action joined in one suit cannot conveniently be tried or disposed of together the Court may order separate trials or make such other order as may be expedient.

5. Where it appears to the Court that any joinder of plaintiffs or defendants may embarrass or delay the trial of the suit, the Court may order separate trials or make such order as may be expedient.

ORDER XVIII

PLAINTS

1. Every suit shall be instituted by the presentation of a plaint.

2. A plaint shall be presented to the Registrar, and all plaints shall be registered and numbered by him according to the order in which they are presented.

3. Every plaint shall comply with the rules contained in Order XXI of these Rules so far as they are applicable.

4. A plaint shall contain the following particulars:

(*a*) the names of the plaintiff and of the defendant;

(*b*) the facts constituting the cause of action and when it arose;

(*c*) the facts showing that the Court has jurisdiction;

(*d*) the declaration which the plaintiff claims.

5. The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it, and the Registrar shall sign the list if on examination he finds it to be correct.

6. The plaint shall be rejected:

(*a*) where it does not disclose a cause of action;

(*b*) where the suit appears from the statement in the plaint to be barred by any law.

7. Where a plaint is rejected the Court shall record an order to that effect with the reasons for the order.

8. The rejection of the plaint shall not of itself preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

9. Where a plaintiff sues upon a document in his possession or power, he shall produce it to the Registrar when the plaint is presented and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

10. Where the plaintiff relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

11. Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is.

12. A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence at the hearing of the suit.

ORDER XIX

Issue and Service of Summons

1. When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim.

2. Every summons shall be signed by the Registrar, and shall be sealed with the Seal of the Court.

3. Every summons shall be accompanied by a copy of the plaint.

4. The summons shall be served by being sent by registered post to the Advocate-General of India or the Advocate-General for the Province, as the case may be, or to an Agent of the defendant empowered to accept service.

5. There shall be endorsed on every summons a notice requiring the defendant to enter an appearance within twenty-eight days after the summons has been served.

6. A defendant shall enter his appearance by filing in the Registry a memorandum in writing containing the name and place of business of his Agent, and in default of appearance being entered within the time mentioned in the summons, or as hereinafter provided, the suit may be heard *ex parte*.

7. The defendant shall forthwith give notice of his having entered an appearance to the plaintiff.

8. The plaintiff shall within fourteen days after the defendant has entered an appearance take out a summons for directions returnable before the Judge in Chambers, and the Judge shall on the hearing of the summons give such directions with respect to pleadings (including a written statement by the defendant), interrogatories, the admission of documents and facts, the discovery, inspection and production of documents and such other interlocutory matters as he may think expedient.

ORDER XX

Written Statement, Set-off and Counter-claim

1. It shall not be sufficient for a defendant in his written statement to deny generally the facts alleged by the plaintiff, but he shall deal specifically with each allegation of fact of which he does not admit the truth, except damages.

2. Where a defendant denies an allegation of fact he shall not do so evasively but shall answer the point of substance.

3. Each allegation of fact in the plaint, if not denied specifically or by necessary implication, or not expressly stated to be not admitted in the pleading of the defendant, shall be taken to be admitted, but the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

4. Where the defendant claims to set off against a demand by the plaintiff any ascertained sum of money, he may in his written statement, but not afterwards without the leave of the Court, state the grounds of his claim and the particulars of the debt sought to be set off.

5. The written statement containing the particulars mentioned in the last preceding Rule shall have the same effect as a plaint in a cross-suit, so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off.

6. The rules relating to a written statement by a defendant shall apply to a written statement by a plaintiff in answer to a claim of set-off.

7. No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court may think fit, but the Court may at any time require a written statement or additional written statement from any of the parties and may fix a time for presenting the same.

8. Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such orders in relation to the suit as it thinks fit.

9. The defendant, in addition to his right of pleading a set-off, may set up by way of counter-claim against the claims of the plaintiff any right or claim in respect of a cause of action accruing to him either before or after the filing of the suit, but before he has delivered his defence and before the time limited for delivering his defence has expired, whether that counter-claim sounds in damages or not, and the counter-claim shall have the same effect as a cross-suit, so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the counter-claim.

10. The Court may, if in its opinion the counter-claim cannot be disposed of in the pending suit or ought not to be

allowed, refuse permission to the defendant to avail himself thereof, and require him to file a separate suit.

ORDER XXI

Pleadings Generally

1. In this Order "pleading" means plaint or written statement.

2. Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies, but not the evidence by which those facts are to be proved, nor any argumentative matter, and shall be divided into paragraphs numbered consecutively.

3. Dates, sums and numbers shall be expressed in figures, and if Indian dates are mentioned the corresponding English dates shall also be given.

4. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

5. Wherever the contents of any document are material, it shall be sufficient to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

6. Every pleading shall be signed by, or by an Advocate on behalf of, the Advocate-General of India or by, or by an Advocate on behalf of, the Advocate-General for the Province, as the case may be.

7. The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice or embarrass or delay the trial of the suit, or which contravenes any of the provisions of this Order.

8. The Court may at any stage of the proceedings allow either party to amend his pleadings in such manner and on such terms as may be just, but only such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.

9. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time or of such fourteen days, as the case may be, unless the time is extended by the Court.

10. Amendments of pleadings made only for the purpose of rectifying a clerical error may be made on an order of the Registrar without notice, but unless otherwise ordered a copy of the order shall be served on all other parties.

ORDER XXII

Discovery and Inspection

1. Order XI of the First Schedule to the Code shall apply with respect to discovery and inspection in suits instituted before the Court, except Rules 5 and 23 of that Order.

2. Where the Court has made an order allowing one party to deliver interrogatories to the other, those interrogatories shall be answered by such persons as the Court may direct.

3. No application for leave to deliver interrogatories shall be made by the defendant until after he has filed his written statement.

4. After an order has been made for the delivery of interrogatories one set of the interrogatories, as allowed, shall be annexed and served with the order upon the person to be interrogated.

5. The Court may, for sufficient reason, allow any affidavit to be sworn, on behalf of the party from whom discovery,

production or inspection is sought, by any person competent to make the same.

6. Where any document is ordered to be deposited in Court a copy of the order and a schedule of the document shall be left in the Registry at the time when the deposit is made.

7. When the purpose for which any documents have been deposited in Court is satisfied, the party by whom they were deposited may, pending the suit, have them delivered out to him, if he has the consent in writing of the other party, or an order of the Court.

ORDER XXIII

Admissions

Order XII in the First Schedule to the Code with respect to admissions shall apply.

ORDER XXIV

Summoning and Attendance of Witnesses

1. The provisions of sections 28 and 32 of the Code shall apply to summonses to give evidence or to produce documents under these Rules.

2. Order XVI in the First Schedule to the Code with respect to the summoning and attendance of witnesses shall apply, with the exception of the proviso to sub-rule (3) of Rule 10, and the words "(*a*) within the local limits of the Court's ordinary original jurisdiction, or (*b*) without such limits but" in Rule 19.

ORDER XXV

Adjournments

Order XVII in the First Schedule to the Code with respect to adjournments shall apply, with the substitution in Rule 2 of the words "in such manner as it thinks just" for the words "in one of the modes directed in that behalf by Order IX, or make such other order as it thinks fit".

ORDER XXVI

Hearing of the Suit and Examination of Witnesses

1. Rules 1, 2, 3, 17 and 18 of Order XVIII in the First Schedule to the Code with respect to the hearing of suits and examination of witnesses shall apply.

2. Witnesses in attendance shall be examined orally in open Court and their evidence taken down in shorthand in the form of question and answer by such officers of the Court as may be appointed for the purpose.

3. The transcript of the shorthand note shall be signed by the officer recording the note and shall be deemed the deposition of the witness and shall form part of the record.

4. The party to any suit or matter in which the evidence has been taken in shorthand, and the witness whose evidence has been taken, shall be entitled upon payment of the prescribed fee to be furnished with a certified copy of the transcript.

ORDER XXVII

Affidavits

Order XIX in the First Schedule to the Code with respect to affidavits shall apply.

ORDER XXVIII

Judgments, Decrees and Orders

1. The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their Agents, and the decree or order shall be drawn up in accordance therewith.

2. The Court may read a judgment signed by a member of the Court, but not read by him, before his death, retirement, resignation or departure on leave.

3. A judgment pronounced by the Court or by a majority of the Court or by a dissenting Judge in open Court shall not afterwards be altered or added to, save for the purpose of correcting a clerical or arithmetical mistake or an error arising from any accidental slip or omission.

4. Certified copies of the judgment, decree or order shall be furnished to the parties on application to the Court, and at their expense.

5. Every decree shall be drawn up in the Registry and be signed by the Registrar and by the presiding judge, or in his absence by the next senior judge, and shall be sealed with the Seal of the Court and shall bear the same date as the judgment in the suit.

6. A decree shall specify clearly the declaration granted or other determination of the suit.

7. In every decree or order that is not final, liberty to apply shall be implied.

8. Every order of the Court shall be drawn up in the Registry and be signed by the Registrar.

9. Every order made by the Registrar or other officer shall be drawn up in the Registry and signed by the Registrar or other officer as the case may be.

10. Every order after being signed shall be sealed and filed.

11. No decree or order shall be drawn up until applied for by a party.

12. In cases of doubt or difficulty with regard to a decree or order made by the Court, the Registrar shall, before issuing the draft, submit the same to the Court.

13. Where a draft of any decree or order is required to be settled in the presence of the parties, the Registrar shall by notice in writing appoint a time for settling the same and the parties shall attend the appointment and produce their

briefs and such other documents as may be necessary to enable the draft to be settled.

14. Where any party is dissatisfied with any decree or order as settled by the Registrar, the Registrar shall not proceed to complete the decree or order without allowing that party sufficient time to apply by motion to the Court.

ORDER XXIX

Withdrawal and Adjustment of Suits

1. Rules 1, 2 and 3 of Order XXIII in the First Schedule to the Code with respect to the withdrawal and adjustment of suits shall apply.

2. No new suit shall be brought in respect of the same subject-matter until the terms or conditions, if any, imposed by the order permitting the withdrawal of a previous suit or giving leave to bring a new suit have been complied with.

ORDER XXX

Payment into Court

Order XXIV in the First Schedule to the Code with respect to payment into Court shall apply.

ORDER XXXI

Special Case

Rules 1, 3 and 5 of Order XXXVI in the First Schedule to the Code with respect to procedure by way of Special Case shall apply, except the words "which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement" in sub-rule (1) of Rule 3, the words "claiming to be interested as plaintiff or plaintiffs" to the end of sub-rule (2) of Rule 3; and the words "and upon the judgment so pronounced a decree shall follow" in sub-rule (2) of Rule 5.

PART IV

Appeals to His Majesty in Council

ORDER XXXII

Order XLV in the First Schedule to the Code shall apply with respect to appeals by leave of the Federal Court to His Majesty in Council, with the following exceptions and modifications:

1. Rules 4 and 5 shall not apply.

2. In Rule 1 the words "any decision of the Federal Court" shall be substituted for the words "a final order".

3. In Rule 2 the words "Federal Court" shall be substituted for the words "Court whose decree is complained of".

4. The following shall be substituted for sub-rule (1) of Rule 3:

 "(1) Every petition shall state the grounds of appeal and pray for a certificate that the case is a fit one for appeal to His Majesty in Council and that it does not fall within paragraph (*a*) of section 208 of the Act."

5. In paragraph (*b*) of sub-rule (1) of Rule 7, "Federal Court" shall be substituted for "High Court".

6. The following shall be substituted for Rule 13:

 " The Court may on the grant of a certificate order or continue any state of execution upon such terms and conditions as the Court thinks just."

7. In sub-rule (1) of Rule 15 the words "to the Federal Court" shall be substituted for the words "to the Court from which the appeal to His Majesty was preferred".

PART V

ORDER XXXIII

SPECIAL REFERENCES UNDER SECTION 213 OF THE GOVERNMENT OF INDIA ACT 1935

1. On the receipt by the Registrar of the order of the Governor-General referring a question of law to the Court, the Registrar shall give notice to the Advocate-General of India to appear before the Court on a day specified in the notice to take the directions of the Court as to the parties who shall be served with notice of the Special Reference, and the Court may, if it considers it desirable, order that notice of the Special Reference shall be served upon such parties as may be named in the order.

2. The notice shall require all such parties served therewith as desire to be heard at the hearing of the Special Reference to attend before the Registrar on the day fixed by the order to take the directions of the Court with respect to statements of facts and arguments and with respect to the date of the hearing.

3. Subject to the provisions of this Order, the procedure on a Special Reference shall follow as nearly as may be the procedure or proceedings before the Court in the exercise of its original jurisdiction, but with such variations as may appear to the Court to be appropriate and as the Court may direct.

4. After the hearing of the Special Reference, the Registrar shall transmit to the Governor-General the Report of the Court thereon.

5. The Court may make such order as it thinks fit as to the costs of all parties served with notice under these Rules and appearing at the hearing of the Special Reference.

PART VI

ORDER XXXIV

COSTS

1. Subject to any provisions of any statute or of these Rules, the costs of and incidental to all proceedings shall be in the discretion of the Court.

2. Where it appears that the hearing of any suit or matter cannot conveniently proceed by reason of the neglect of the Agent of any party to attend personally, or by some proper person on his behalf, or of his omission to deliver any paper necessary for the use of the Court which ought to have been delivered, the Agent shall personally pay to all or any of the parties such costs as the Court may think fit to award.

ORDER XXXV

TAXATION

[This Order consists of 46 Rules. The Registrar is to be the Taxing Officer of the Court. In the absence of any specific provisions in these Rules he is to be guided by the rules and practice of the Supreme Court in England.]

PART VII

Miscellaneous

ORDER XXXVI

NOTICE OF PROCEEDINGS TO ADVOCATES-GENERAL, ETC.

1. The Court may direct notice of any proceedings to be given to the Advocate-General of India or to the Advocate-General of any Province, and any Advocate-General to whom such notice is given may appear and take such part in the proceedings as he may be advised.

2. The Advocate-General of India and the Advocate-General of any Province may apply to be heard in any pro-

ceedings before the Court, and the Court may, if in its opinion the justice of the case so requires, permit any Advocate-General so applying to appear and be heard, subject to such terms as to costs or otherwise as the Court may think fit.

ORDER XXXVII

Power to dispense with Requirements of Rules, etc.

1. The Court may, for sufficient cause shown, excuse the parties from compliance with any of the requirements of these Rules, and may give such directions in matters of practice and procedure as it shall consider just and expedient.

2. An application to be excused from compliance with the requirements of any of the Rules shall be addressed in the first instance to the Registrar, who shall take the instructions of the Court thereon and communicate the same to the parties, but if in his opinion it is desirable that the application should be dealt with in open Court, he may direct the applicant to lodge it in the Registry, and to serve the other parties with a notice of motion returnable before the Court.

3. The Court may enlarge or abridge any time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any enlargement may be ordered, although the application therefor is not made until after the expiration of the time appointed or allowed.

4. The Court may at any time, either of its own motion or on the application of any party, make such orders as may be necessary or reasonable in respect of any of the matters mentioned in Rule 8 of Order XIX of these Rules, may issue summonses to persons whose attendance is required either to give evidence or to produce documents, or order any fact to be proved by affidavit.

ORDER XXXVIII

Forms to be Used

1. Every writ, summons, order, warrant or other mandatory process shall run and be in the name of His Majesty the King, Emperor of India, and shall bear the attestation of the Chief Justice, and shall be signed by the Registrar with the day and the year of signing, and shall be sealed with the Seal of the Court.

2. The forms set out in the Fifth Schedule to these Rules, or forms substantially to the like effect with such variations as the circumstances of each case may require, shall be used in all cases where those forms are appropriate.

ORDER XXXIX

Provisions with respect to Service of Documents

1. Except where otherwise provided by Statute or prescribed by these Rules, all notices, orders or other documents required to be given to, or served on, any person shall be served in the manner provided by the Code for the service of a summons.

2. Service of any notice, order or other document on the Agent of any party may be effected by delivering it to the Agent or by leaving it with a clerk in his employ at his place of business.

3. Service of any notice, order or other document upon a person who resides at a place within British India between which place and Delhi there is communication by registered post, may, where so directed by the Court, be effected by posting a copy of the document required to be served in a prepaid envelope registered for acknowledgment, addressed to the party or person at the place where he ordinarily resides.

4. A document served by post shall be deemed to be served at the time at which it would be delivered in the ordinary course of post.

5. Unless the Court otherwise orders, the service of any notice, order or other document shall be proved by the production of a certificate by the Registrar that appearance has been entered, or, where no appearance has been entered, by evidence showing that the notice, order or other document was served in the manner provided by the Code.

6. Where the notice, order or other document has been served through another Court, the service may be proved by the deposition or affidavit of the serving officer made before the Court through which the service was effected.

7. Service effected after Court hours shall for the purpose of computing any period of time subsequent to that service be deemed to have been effected on the following day.

ORDER XL

Notices of Motion

1. Except where otherwise provided by Statute or prescribed by these Rules, all applications which in accordance with these Rules cannot be made in Chambers shall be made on motion after notice to the parties affected thereby, but the Court where satisfied that the delay caused by notice would or might entail serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court may think just, and any party affected by the order may move to have it set aside.

2. A notice of motion shall be intituled in the suit or matter in which the application is intended to be made, and shall state the time and place of application and the nature of the order asked for and shall be addressed to the party or parties intended to be affected by it and their Agent or Agents, if any, and shall be signed by the Agent of the party moving, or by the party himself where he acts in person.

3. Save by the special leave of the Court, there shall be at least five days before service of motion and the day named for bringing on the motion.

4. The notice of motion, together with the affidavit or affidavits of service and the affidavit in support thereof shall be filed in the Registry immediately after service of notice, but not less than four days before the day named for bringing in the motion, and affidavits in answer or reply shall be filed in the Registry during office hours not later than 4 P.M. on the day preceding the day of the hearing.

5. Leave under the last preceding Rule to give short notice of motion may be obtained *ex parte* from the Court, and the provisions in the last preceding Rule as to the filing of notice and motion and affidavit shall apply, save that they shall be filed not later than the next day after service of the motion.

6. Notice shall be given to the other party or parties of all grounds intended to be urged in support of, or in opposition to, any motion.

7. Save by leave of the Court, no affidavit in support of the application beyond those specified in the notice of motion, nor any affidavit in answer or reply filed later than the time prescribed in these Rules, shall be used at the hearing or allowed on taxation.

8. Unless otherwise ordered the costs of a motion in a suit or proceeding shall be treated as costs in that suit or proceeding.

ORDER XLI

COMMISSIONS TO TAKE EVIDENCE

1. Order XXVI in the First Schedule to the Code with respect to commissions to examine witnesses shall apply, except Rules 13, 14, 19, 20, 21 and 22.

2. An application for the issue of a commission may be by summons in Chambers to all parties who have appeared, or *ex parte* where there has been no appearance.

3. The commissioner shall, if the Advocate or other person examining a witness so desires, record a question disallowed

by the commissioner and the answer thereto, but the same shall not be admitted as evidence until the Court before whom the deposition is put in evidence shall so direct.

4. The Court may, when the commission is not one for examination on interrogatories, order that the commissioner shall have all the powers of a Court under Chapter X of the Indian Evidence Act to decide questions as to the admissibility of evidence, and to disallow any question put to a witness.

5. Unless otherwise ordered the party at whose instance the commission is ordered to issue shall lodge in Court copies of the pleadings in the case within twenty-four hours of the making of the order, and those copies shall be annexed to the commission when issued.

6. Any party aggrieved by the decision of the commissioner refusing to admit evidence or allow a question to be put may apply to the Court to set aside the decision and for direction to the commissioner to admit the evidence or to allow the question, but no such application shall be entertained if made later than seven days after the examination of the witness has been closed.

7. After the deposition of any witness has been taken down and before it is signed by him, it shall be read over and, where necessary, translated to the witness, and shall be signed by him and left with the commissioner, who shall subscribe his name and the date of the examination.

8. Commissions shall be made returnable within such time as the Court may direct.

ORDER XLII

Security for Costs

1. In any suit, appeal, or matter before the Court, the Court may at any stage require any party to furnish security for costs.

2. Where security is required to be furnished, it shall be given to the Registrar or to such other officer as the Court

may specially direct, and the Court may permit or order him to assign the same to any other person for the purpose of suing thereon upon such terms as the Court may think fit.

3. Every person, other than a Guarantee Society, offering himself as a surety shall, where so required by the Registrar, produce his title-deeds and vouchers and make an affidavit stating that he is worth the amount required.

4. A Guarantee Society, duly approved by the Court, may be accepted as surety upon its joining in a bond with the person ordered to give the security.

ORDER XLIII

Saving for Inherent Powers of Court

Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

First Schedule

Senior and Other Advocates

1. A Senior Advocate shall not appear or plead without a junior.

2. A Senior Advocate shall not accept instructions to draw pleadings, affidavits, advice on evidence or to do any drafting work of an analogous kind, but this prohibition shall not extend to settling any such matters as aforesaid in consultation with a junior.

3. An enrolled Advocate may, if otherwise qualified, apply to be enrolled in the list of Senior Advocates, and any fee payable by him on enrolment shall be reduced by the amount of the fee paid by him on his original enrolment.

4. A Senior Advocate appearing with another Senior Advocate senior to himself shall be entitled to, and shall be

paid, a fee not less than two-thirds of the fee marked on the brief of that other Advocate, and a junior appearing with a Senior Advocate or with any other Advocate senior to himself shall be entitled to, and shall be paid, a fee not less than one-third and not more than two-thirds of the fee marked on the brief of the Senior or other Advocate, but this rule shall not apply in the case of a second junior.

5. A Senior Advocate may announce that he will not accept any brief, or any brief of a specified class, without a special fee of a named amount, in addition to the ordinary fee marked on the brief, and shall not so long as that announcement is in force accept a brief without that special fee.

6. An Advocate appearing with a Senior Advocate whose brief is marked with a special fee in accordance with the last preceding rule shall only be entitled to his proper proportion of the ordinary fee marked on the Senior Advocate's brief and not to any proportion of the special fee.

7. In matters not specially provided for in this Schedule, the rules adopted by the English Bar, and in particular the rules applicable to the relation between King's Counsel and members of the junior Bar, shall so far as possible be applied to Senior and other Advocates respectively, and any disputes arising under this Schedule shall be referred to and determined by the Chief Justice.

Second Schedule
Fees to Advocates
Part I

		Fee on Brief	Refresher
Defended Appeals, Suits and References under Section 213.	Leading Advocate.	Not exceeding 60 G. Ms.	Not exceeding 25 G. Ms.
	2nd Advocate.	40 G. Ms.	20 G. Ms.
	3rd Advocate if allowed.	20 G. Ms.	10 G. Ms.
Undefended Appeals (that is where Respondent has not entered appearance or has not filed a statement of facts and arguments).	One Advocate.	20 G. Ms.	
Opposed motions or investigations in Court.	Leading Advocate.	10 G. Ms.	No refresher unless specially allowed by the Taxing Officer.
	2nd Advocate if allowed.	7 G. Ms.	
Opposed applications or investigations in Chambers when certified.	One Advocate.	10 G. Ms.	Do.
Ex parte motions or Chamber applications when certified.	One Advocate.	5 G. Ms.	
Hearing judgment in suits, appeals or special references where judgment was reserved.	One Advocate.	2 G. Ms.	
Examination of witness before Commissioner.	Leading Advocate.	10 G. Ms.	7 G. Ms.
	2nd Advocate.	7 G. Ms.	5 G. Ms.

Part II

Drawing pleadings	5 G. Ms.
Settling pleadings	15 G. Ms.
Drawing or settling petitions of appeal	30 G. Ms.
Drawing or settling respondent's statement of facts and arguments	30 G. Ms.
Drawing or settling Special Case	10 G. Ms.

Drawing or settling affidavits or petitions not otherwise provided for	10 G. Ms.
Advice on evidence	10 G. Ms.
Consultations—	
Leading Advocate	5 G. Ms.
Second Advocate	3 G. Ms.
Conferences with Agents, if allowed	5 G. Ms.
General Retainer	5 G. Ms.
Special Retainer	2 G. Ms.

For the purposes of this Table a Gold Mohur shall be deemed to be the equivalent of Rs. 16.

THIRD SCHEDULE

TABLE OF COURT FEES

Part I

Original Jurisdiction

	Rs.	A.	P.
1. Filing and registering plaint	50	0	0
2. Filing and registering written statement	25	0	0
3. Filing and registering written statement, pleading, set-off or counter-claim	50	0	0
4. Reply to a counter-claim	25	0	0
5. For examining and comparing documents with the original, each	2	0	0
6. For reducing into writing or, where taken down in shorthand, transcribing the deposition of each witness for each folio	0	10	0
7. Every final decree where its value or amount does not exceed Rs. 10,000	50	0	0
Where it exceeds Rs. 10,000	80	0	0
8. Decree for the defendant	10	0	0
9. Decree for the defendant in suits in which set-off in pleaded or counter-claim made and balance awarded to defendant, upon the amount of balance awarded. (Same as in decrees for plaintiff)		..	
10. Typed copies of transcript of depositions of witnesses for any party, first copy per folio	0	3	0
Subsequent copies	0	1	0
11. Petition for admission of appeal to His Majesty in Council under Section 208 (*a*) of the Act	30	0	0
12. Every requisition to draw up an order admitting appeal to His Majesty in Council under Section 208 (*a*) of the Act, including fee for filing	15	0	0

Part II

Appellate Jurisdiction

	Rs.	A.	P.
1. Petition to proceed *in forma pauperis* . .	1	0	0
2. Lodging and registering appeal . .	40	0	0
3. Filing and registering concise statement of respondent	25	0	0
Where concise statement contains cross objections	35	0	0
4. Every decree for plaintiff on appeal in which lower court was in favour of defendant upon the value or amount of the decree as in suits .	..		
5. Every decree for plaintiff on appeal where the amount decreed in lower court is increased upon the amount of the increase as in suits . .	..		
6. Decrees in other cases	50	0	0
7. Petition for leave to appeal to His Majesty in Council under Section 208 (*b*) of the Act .	30	0	0
8. Every requisition to draw up an order granting or refusing leave to appeal to His Majesty in Council under Section 208 (*b*) of the Act .	30	0	0
9. Every requisition to draw up an order declaring appeal to His Majesty in Council admitted, under Section 208 (*b*) of the Act, including fee for filing same and fee for certificate . .	30	0	0
10. Estimate of costs of preparing paper book (where necessary)	16	0	0
11. Settlement of index and list of paper book for every 16 papers or part of 16 papers . .	1	0	0
12. Filing index and list of paper book per folio or part of a folio	1	0	0
13. Copies to be made over to appellants' agent for paper book, including examination per folio .	0	8	0
14. Examining and passing final or press proof for each proof per folio	0	2	0
15. Approving each marginal note . . .	0	4	0
16. Certifying transcript or printed record for every eight pages or part thereof (for appeal to Privy Council)	1	0	0

Part III

Miscellaneous

[Under this heading are set out 40 items, including the fee of Rs. 100 for the admission of an Agent.]

FOURTH SCHEDULE

[In this schedule are set out fees to Agents and Officers of Court.]

FIFTH SCHEDULE

[In this schedule are set out the following forms: No. 1, Form of Oath by Translator; No. 2, Application for Production of Records; No. 3, Certificate of Enrolment of Advocate; No. 4, Undertaking by Agent; No. 5, Form of Summons for an Order in Chambers; No. 6, Notice of Appeal from Registrar; No. 7, Memorandum of Appearance in Person; No. 8, Notice to Parties of the day fixed for hearing of Appeal; No. 9, Summons for Disposal of Suits; No. 10, Memorandum of Appearance through Agent; No. 11, Writ of Commission.]

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